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May 24, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

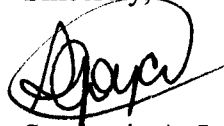
Re: Initial Comments, CC Docket No. 96-128, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*

Dear Ms. Dortch:

Attached please find the Initial Comments of T-NETIX, Inc. ("T-NETIX") filed electronically in the above-captioned case.

Please do not hesitate to contact me with any questions or concerns regarding this matter: 202.955.9890.

Sincerely,



Stephanie A. Joyce
Counsel for T-NETIX, Inc.

Attachment

**Before the Federal Communications Commission
Washington, D.C. 20054**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation Provisions)	
Of the Telecommunications Act of 1996)	

INITIAL COMMENTS OF T-NETIX, INC.

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Dated: May 24, 2002

SUMMARY

Inmate telecommunications services present a unique competitive scenario due to the unique demands of the correctional institution setting. This market is in part vigorously competitive and in part a conglomeration of regulated monopolies, bound together through significant security concerns that differentiate these services from all other telecommunications services. Consequently, the mechanisms by which rates are established for inmate services operate differently than the competitive forces typical to other services.

The Commission's chief challenge in this proceeding is site commissions. These fees, or "location rents," are assessed on every provider of inmate services and have a profound effect on rates. They are a condition of doing business in this market and can constrain the ability of carriers to lower rates.

Because site commissions are the crux of the policy issue in this proceeding, the two other policy approaches under consideration – debit cards and rate caps – would be of little effect. Neither debit cards nor rate caps have the effect of reducing or eliminating site commissions. In addition, they present implementation difficulties that render them inappropriate in many instances.

In this light, T-NETIX suggests that the Commission consider the appropriateness of taking direct action with respect to site commissions themselves. Federal appellate courts have found that the Commission has pervasive authority under Section 276 of the Telecommunications Act of 1996 to regulate all aspects of payphone rates, including inmate payphone rates. Under this authority, the Commission could hold that site commissions are unreasonable and not in the public interest. Although state commissions and legislatures have been considering taking this step – one has done so with some success – a state-administered

process will have the inevitable result of delay and disuniformity that may advantage some states over others.

If the Commission wishes to take action that would have an immediate and direct effect on rates, bringing the benefits of what is, in fact, a very competitive market to end user inmates and families, it must change the existing competitive dynamic in the inmate services market. If such a change is to occur, a uniform, national approach is required.

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In the Matter of)	
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Implementation of the Pay Telephone)	CC Docket No. 96-128
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Of the Telecommunications Act of 1996)	

INITIAL COMMENTS OF T-NETIX, INC.

T-NETIX, Inc. ("T-NETIX"), by its attorneys, submits these comments in response to the recent *Inmate Rate NPRM*¹ released in this docket. T-NETIX shares the Commission's concerns that rates for inmate telecommunications services may be subject to upward pressure from exogenous causes – site commissions – and that competition with respect to those commissions in the inmate market may decrease incentives for cost-reduction and technological innovation. As we discuss in these comments and in the accompanying sworn declaration of Richard Cabe, Ph.D. dated May 22, 2002 ("Cabe Decl."),² an economist specializing in telecommunications, T-NETIX believes that the *Inmate Rate NPRM* raises substantial public policy issues that merit serious consideration by the Commission under its Section 276 authority.

INTRODUCTION

T-NETIX is a provider of inmate telecommunications services and equipment serving correctional facilities throughout the United States. T-NETIX's services comprise payphone

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, FCC 02-39 (rel. Feb. 21, 2002) ("*Order on Remand*" and "*Inmate Rate NPRM*," respectively). The notice for comments was published April 9, 2002 at 67 Fed. Reg. 17036.

² Attached hereto at Appendix A.

service, operator service, and local and long-distance voice communications services. It has served inmates and correctional facilities since 1989.³

Having served this market for more than a decade, T-NETIX has extensive experience in the contracting and provisioning processes for inmate telecommunications services. It has seen, and largely pioneered, significant technological advances that have made service provisioning more efficient for facilities and less costly to carriers. In addition, however, it has been obligated to pay site commissions of various types to the facilities they serve; these commissions have increased substantially in the last ten years. Thus, while its rates continue to be among the lowest in the country, T-NETIX must continue to cover these site commissions in the course of doing business. In order to alleviate this burden, T-NETIX has worked with regulatory and legislative bodies to establish mechanisms to ensure that carriers are able to provide reliable and affordable service to inmates while maintaining a reasonable rate of return. T-NETIX is thus pleased to assist the Commission in this endeavor and is encouraged by its interest in these issues.

BACKGROUND: PROVISIONING INMATE TELECOMMUNICATIONS SERVICES

As the Commission is aware, inmate telecommunications services are provided to a correctional facility through a single-carrier system, with exclusive contracts awarded pursuant to a public bidding process.⁴ This bidding process is typically supervised by the relevant authorized correctional agency, usually a state or a county. That body will release a Request for Proposals (“RFP”) that details the location(s) to be served, the type of service requested, and will

³ In 1999, T-NETIX acquired Gateway Technologies, Inc., a leading inmate telecommunications services provider that has participated in several Commission proceedings related to the rates and practices of payphone services providers. In fact, Gateway’s comments on inmate payphone issues were cited by the Commission in the *Order on Remand*. *Order on Remand* ¶ 6 n.17, ¶ 22 n.59.

⁴ *Inmate Rate NPRM* ¶ 72.

provide several mandatory conditions with which the winning bidder must comply.⁵ Several state statutes grant express authority to correctional authorities for imposing such conditions on vendor contracts; correctional authorities typically codify the requirements for inmate telecommunications services in their agency rules.⁶

The two principal obligations that RFPs include are the payment of site commissions and the maintenance of system security.⁷ In responding to an RFP, all carriers must certify that they can and will comply with these provisions should they win the contract. Thus, site commissions and security costs are an unavoidable component of doing business in this market.

Site commissions are assessed in a number of forms: as a percentage of net or gross revenue, as an initial “signing bonus,” or as an in-kind contribution of equipment or other tangible goods unrelated to the provisioning of telecommunications services.⁸ The gains that facilities may accrue through site commissions are largely used to defray the cost of administration: in New Mexico, for example, site commission revenues are built into the state correctional budget.⁹ Their toll on inmate service providers, however, can be substantial. For instance, site commissions comprise 33% of T-NETIX’s costs in New Mexico.¹⁰ These site commissions are fixed in carriers’ service contracts; carriers are thus constrained in their ability to offer lower rates to end users for the duration of their service period.¹¹

The security requirements that correctional authorities require are extensive and detailed.

⁵ See Request for Proposal of Tulsa County (May 5, 1997), attached at Appendix B.

⁶ See New Mexico Department of Corrections Regulation CD-150300 (1992, rev. 1999) attached as Appendix C.

⁷ See *Inmate Rate NPRM* ¶¶ 72-73.

⁸ See Cabe Decl. ¶ 5.

⁹ See Reports from the New Mexico Legislative Finance Committee, 1992, 1993 and 1994-95 attached hereto to Appendix D. T-NETIX notes that, in some instances, site commission revenues are absorbed into a the general state fund and appropriated to any needy state program.

¹⁰ Direct Testimony of Richard Cabe, Ph. D., on Behalf of Gateway Technologies, Inc. at 11 (Aug. 21, 2000) in New Mexico Public Regulation Commission (“NMPRC”) Case 3317, attached as Exhibit 2 to the Cabe Declaration.

Carriers must implement measures to block calls to specific numbers, to prevent three-way calling, and in many cases to impose automatic time limits on calls. These measures are necessary for the safety of correctional officers, inmates, as well as persons outside the prisons such as attorneys, judges and jurors. As with site commissions, compliance with these security requirements is universally required and non-negotiable.

One of the consequences of these security requirements is that service may be provided by only one carrier per each facility.¹² Service options that are available to the general public, such as 0+ dial-around and 1-8XX collect services, cannot be available to inmates because they cannot ensure that inmate calls are subject to the necessary security requirements. For example, call blocking software would be entirely circumvented if an inmate were able to reach another carrier's platform.

Thus, the peculiar nature of inmate telecommunications services endows it with both competitive and non-competitive characteristics. The RFP bidding process is fully, and highly, competitive.¹³ Once a contract is awarded, however, correctional regulations require that competition be displaced in favor of a single-provider system. The imposition of mandatory site commissions on this unique provisioning framework has a peculiar effect on rates. Specifically, as Dr. Cabe discusses, in some instances the correctional facilities derive significant economic benefit from the single-provider system, as carriers agree in each contract to pay the site commission requirements that the facilities impose.¹⁴ Thus, competition for contracts has the perverse effect of benefiting not the end user inmates, but the facility.¹⁵ Dr. Cabe characterizes

¹¹ "Competitors cannot fail to deliver all possible benefits of competition to facilities rather than those who pay for inmate calling." Cabe Decl. ¶ 12.

¹² See *Inmate Rate NPRM* ¶ 72.

¹³ See, e.g., Cabe Decl. ¶¶ 4, 10.

¹⁴ See *id.* ¶ 6.

¹⁵ *Id.*

this effect as “misdirected competition.”¹⁶

With this background in mind, T-NETIX will discuss the Commission’s policy options for addressing this issue, and will explain why the crux of the matter lies in site commissions. Debit cards and rate caps, which the Commission is considering, are second-order solutions that will have little or no effect on the upward pressure that site commissions impose on rates.

I. THE COMMISSION HAS THE AUTHORITY TO LIMIT OR ABOLISH SITE COMMISSIONS

Section 276 of the Telecommunications Act of 1996¹⁷ grants plenary authority to the FCC to regulate all payphones, including inmate payphones. In addressing the “upward spiral” of site commissions, and more specifically their effect on inmate service rates, the Commission may invoke this authority to regulate, even to prohibit, site commissions as a condition of providing service.

Section 276 directs the Commission to “ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call[.]”¹⁸ The D.C. Circuit held that this provision grants the Commission exclusive authority to regulate payphones in *Illinois Public Telephone v. FCC*, 117 F.3d 555 (1997). In that case, the Court reviewed the Commission’s first order in this docket,¹⁹ in which it ordered that all local coin rates for payphones are deregulated as a matter of federal law. Petitioners argued that the Commission had no authority to impose nationwide deregulation under Section 276, because that statute requires only “fair compensation” for payphone calls and does not speak to the setting of local coin rates, much less federal preemption of state coin rates. 117 F.3d at 562. The D.C. Circuit disagreed, finding that Section 276 “unambiguously grants the Commission authority to regulate

¹⁶ Cabe Decl. ¶ 14.

¹⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. §§ 151 *et seq.* (West 2001).

¹⁸ 47 U.S.C. § 276b)(1)(A).

the rates for local coin calls,” including the converse – federal local coin rate deregulation. *Id.*

This holding makes clear the Commission’s broad authority over all payphone ratesetting.

In addition, Section 276 contains an express preemption clause, which provides that

To the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such state requirements.

47 U.S.C. § 276(c).

Although the D.C. Circuit did not reach this provision in *Illinois Bell*, the language of this subsection evinces a clear Congressional intent to imbue the Commission with the authority to regulate all aspects of payphone compensation.²⁰ Where the Commission speaks on payphone rates, any inconsistent state regulation must fall away.

As the Commission has consistently held, inmate payphones are governed by Section 276 just as are public payphones.²¹ In fact, it was under the authority of Section 276 that the Commission reviewed the petition for reconsideration filed by the Inmate Calling Services Providers Coalition – the case from which this proceeding arose. Thus, just as it deregulated local coin rates in *Illinois Public Telephone*, the Commission may exert federal authority over the rates applied to inmate phones. Specifically, the Commission may conclude that site commissions in the context of a single-provider system exert unreasonable upward pressure on rates and are not in the public interest. Were it to do so, T-NETIX believes that Section 276 would operate to prohibit any state authority from imposing or permitting site commissions for inmate services.

¹⁹ CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20541 (1996).

²⁰ See *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355 369 (1986); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).

²¹ CC Docket No. 96-128, Order on Reconsideration, 11 FCC Rcd. 21233, 21269 (1996), *aff’d in part and remanded in part*, *Illinois Pub. Tel. Ass’n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *cert. denied sub nom. Virginia State Corp. Comm’n v. FCC*, 523 U.S. 1046 (1998); Report and Order, 11 FCC Rcd. 20541, 20579 (1996).

As Dr. Cabe explains, site commissions create a scheme wherein “the benefits of competition do not presently reach those who pay for inmate calling.”²² If, however, site commissions were restricted or restructured, “the Commission would take a substantial step toward redirecting competition to the benefit of those who pay for inmate calling.”²³ A prohibition, imposed on all future contracts for the provision of inmate telecommunications service, would free carriers to set rates based solely on market forces rather than unrelated exogenous costs.

States have begun to take incremental steps to address inmate service rates. For instance, the New Mexico Legislature recently enacted a law to this effect, prohibiting percentage-based site commissions on a going-forward basis.²⁴ This legislation represents a helpful, though imperfect,²⁵ step toward focusing competition in inmate services on the end user rather than the facility. This type of state legislation, however, will be piecemeal, inevitably resulting in lack of uniformity among states, perhaps making some states unattractive to carriers. The ultimate consequence could be diminished competition in inmate telecommunications services.

A federal prohibition would be a far more powerful measure, simply by virtue of its uniform nationwide application. To be successful, however, it would need to cover all types of site commissions, as facilities employ several forms of site commissions – both monetary and in-kind²⁶ – to meet their financial needs. The Commission should also be sensitive to the fact that some in-kind contributions are dedicated to “legitimate security interests of the confinement facility” rather than being fees that “amount to location rents.”²⁷ These caveats notwithstanding,

²² Cabe Decl. ¶ 6.

²³ *Id.* ¶ 12.

²⁴ NMSA 1978, § 33-14-1 (attached as Exhibit 3 to the Cabe Declaration).

²⁵ *See* Cabe Decl. ¶ 13.

²⁶ Cabe Decl. ¶ 7.

²⁷ *Id.* ¶ 12.

a Commission conclusion with regard to the legality of site commissions would largely resolve its concerns that inmate rates could be excessive.

The Commission may find that all site commissions are unlawful, or it may set a federal benchmark for commissions that it declares *per se* reasonable.²⁸ Because revenue derived from site commissions are frequently a source of funding for correctional facilities, a benchmark approach may be more appropriate at this time. Even that measure would have a significant effect on this market, providing assurance to carriers that site commissions will remain at objectively defined levels. With this assurance, carriers can focus on deploying more efficient networks, which will enable them to lower costs and compete even more vigorously to deliver services.

II. DEBIT CARDS WILL NOT RESOLVE THE COMMISSION'S CONCERNS REGARDING INMATE SERVICE RATES

The Commission seeks comment on the effect that prepaid debit cards will have on the current rate structure for inmate telecommunications services.²⁹ Although debit cards carry some advantages for both carriers and inmates, they do not represent a panacea for service rates.³⁰ Rather, they present their own financial burdens, as well as security risks, that render them a second-order solution to inmate service rates.

The chief advantage of debit cards, as the Commission points out,³¹ is that they reduce the incidence of bad debt. Because they are prepaid, debit cards allow carriers to receive full payment in advance. Carriers will realize this benefit, however, only if the facilities in which the

²⁸ In a similar action, the Commission recently established federal benchmarks for the access charges imposed by competitive local exchange carriers. *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd. 9923, 9938-40 (2001). T-NETIX suggests that this framework could be appropriate in the context of inmate telecommunications rates.

²⁹ *Inmate Rate NPRM* ¶ 76

³⁰ T-NETIX acknowledges that the federal prison system has employed debit cards to some success. *Inmate Rate NPRM* ¶ 77.

debit cards option is offered strictly enforce the prepayment mechanism. Further, debit cards have no effect if only the persons “who would otherwise pay bills in any case”³² – the non-credit risks – switch to buying debit cards. Thus, advance payment reduces – but does not “eliminate”³³ – carriers’ bad debt, which often results in substantial loss to carriers in this particular market. Debit cards also alleviate somewhat the need for carriers to engage billing agencies and collection services, which impose additional – though lesser – costs on inmate service.

Debit cards have their own attendant costs, however. They require carriers to develop and install software that can query and verify the card holder’s prepaid account. In addition, they entail new costs of manufacturing, distribution, and retail sale.³⁴ These costs significantly diminish the overall savings that carriers may enjoy through the reduction in bad debt and billing costs. As such, debit cards should not be viewed as a guarantor of lower rates for inmate services.

In addition, debit cards entail very real security risks that may deter facilities from accepting them in the first instance. As Qwest has explained in state proceedings, “the use of pre-paid debit cards presents a host of security and administrative issues.”³⁵ First, the plastic cards themselves “can potentially be made into a weapon.”³⁶ Secondly, because debit cards are in themselves a thing of value, they can “introduc[e] a disruptive and potentially dangerous element into the institution,” because they can be “extorted from inmates through the use of

³¹ *Inmate Rate NPRM* ¶ 76.

³² Cabe Decl. ¶ 7.

³³ *Inmate Rate NPRM* ¶ 76.

³⁴ See Cabe Decl. ¶ 8.

³⁵ See Testimony of Michael Horcasitas, Manager in Policy and Law of Qwest Corporation at 4, NMPRC Case 3317 (Aug. 31, 2001), attached hereto in pertinent part as Appendix E (“Horcasitas Testimony”).

³⁶ *Id.*

force, stolen, or simply lost.”³⁷ Finally, debit cards are more difficult to secure within the carrier’s platform, and may enable the holder to access a toll-free platform to “place calls to victims, judges, and witnesses with the facility having no ability to control such calls.”³⁸ The Commission should be mindful of these significant limitations and risks when considering the efficacy of debit cards in the prison context.

Most importantly, debit cards likely will have no effect whatever on the main component of service rates – site commissions. Facilities can extract commissions from any revenue, including on the gross sales of debit cards. Unless site commissions are addressed directly by the Commission, “competition among ICS providers to win contracts will result in cost savings being captured by facilities.”³⁹ Debit cards do not solve the issue of “misdirected competition.”

For these reasons, T-NETIX has found that debit cards are not the preferred solution for inmate telecommunications services. They result in very little cost avoidance and are fraught with implementation issues. T-NETIX therefore recommends that the Commission maintain its focus on site commissions when addressing inmate services.

III. RATE CAPS MAY NOT BE THE APPROPRIATE TOOL FOR REGULATING INMATE TELECOMMUNICATIONS SERVICES

The Commission also seeks comment on the status of rate “ceilings,” or caps, as a means of regulating inmate service rates.⁴⁰ T-NETIX is aware that rate caps are presently effective for inmate services in several states but cautions that they may not be an effective method for addressing the Commission’s concerns regarding inmate service rates.

Rate caps are “very crude instrument[s].”⁴¹ As Dr. Cabe explains, their utility lies solely

³⁷ *Id.* at 4-5.

³⁸ *Id.* at 4.

³⁹ Cabe Decl. ¶ 8.

⁴⁰ *Inmate Rate NPRM* ¶ 75.

⁴¹ Cabe Decl. ¶ 9.

in setting the maximum rate that can be charged in any facility, regardless of whether the actual rates charged reflect a reasonable return. They also carry the consequence of “locking in” rates, having no sensitivity to the demands of the market.⁴² As such, they do not ensure that inmates receive the full benefits of competition.⁴³

In practice, rate caps provide little protection to inmates from excessive rates. State commissions typically set rate caps for inmate services at the current rate charged by the incumbent local exchange carrier, whose rates are often the highest in the state by orders of magnitude. For its part, T-NETIX notes that its rates are far lower than the rate caps in place in several of the states in which it provides services.⁴⁴ We believe that a reorientation of competition in this market toward providing lower cost, more efficient service will induce other carriers to follow T-NETIX’s approach.

In addition, rate caps are extremely difficult to set. As the Commission has found, inmate services entail a “great diversity of local costs and conditions,”⁴⁵ such that calibrating a federal rate cap would be a painstakingly detailed and slow process. Moreover, if it were set incorrectly, the consequences would be severe: too low a cap will force some carriers out of the market; too high a cap will invite excessive rates.⁴⁶ The inevitable result will be, much like the Commission’s endeavors to set a payphone compensation rate, a flurry of appeals and reconsiderations by both carriers and inmate advocacy groups alike.

Finally, as T-NETIX explained with respect to debit cards, rate caps do not address or ameliorate site commissions, which are the chief cause of the Commission’s concerns. Were the

⁴² See Cabe Decl. ¶ 9.

⁴³ See *id.* ¶ 5 (“While states typically have and exercise jurisdiction over rates charged for service to inmates, the amount of location rents currently received by facilities indicates the inability of states to ensure that the benefits of competition accrue to the end user inmates and their families.”).

⁴⁴ See *id.* at 6 n.15.

⁴⁵ *Order on Remand* ¶ 26.

⁴⁶ See Cabe Decl. ¶ 9.

Commission to adopt rate caps based on the present contract scheme, it would only codify, and thus perhaps tacitly approve, the site commissions that carriers are forced to pay. Were it to set rate caps that do not allow for recovery of site commissions, it would “deny the provider an opportunity to recover legitimate costs that were essential to the ICS provider’s winning the contract.”⁴⁷ Only by reviewing directly the propriety of site commissions under its Section 276 authority can the Commission address the rate concerns it raised in the *Inmate Rate NPRM*.

CONCLUSION

For all these reasons, the Commission should consider whether nationwide benchmarks or other rules with respect to correctional facility site commissions are appropriate under its plenary Section 276 authority.

Respectfully submitted,

By: 

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Dated: May 24, 2002

⁴⁷ Cabe Decl. ¶ 10.

APPENDIX A

Declaration of Richard Cabe, Ph.D.

May 22, 2002

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation Provisions)	
Of the Telecommunications Act of 1996)	

DECLARATION OF RICHARD CABE, Ph.D.

1. My name is Richard Cabe. I am an economist in private practice, specializing in economic analysis of the telecommunications industry. I have presented testimony in matters concerning competition in the telecommunications industry to the public utility commissions of Alabama, Arizona, Colorado, Florida, Georgia, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah and Washington. I have also assisted in preparation of comments filed before the FCC. Until May of 1999, I was employed as Associate Professor of Economics and International Business at New Mexico State University. In that position, I taught graduate and undergraduate economics courses and arranged the telecommunications curriculum for conferences sponsored by the Center for Public Utilities. Over my last several years at the university, I offered graduate courses in Industrial Organization, Microeconomic Theory, Antitrust and Monopoly Power, Game Theory, Public Utilities Regulation, and Managerial Economics for MBA students. My experience with telecommunications regulation began in January of 1985 when I was employed by the Washington Utilities and Transportation Commission. During my employment at the Washington Commission, I served as a staff member to the Federal - State Joint Board in CC Docket No. 86-297. When I left the Washington Commission staff to complete my doctoral degree, my title was Telecommunications Regulatory Flexibility Manager. My consulting clients since I left the Washington Commission have included aspiring new entrants into the local telecommunications market, state commissions, and consumer advocates.

2. The purpose of my declaration is to discuss the character of competition in the market for Inmate Calling Services (ICS) and to evaluate three policy approaches that show different levels of promise for reducing the cost of inmate calling. I concur with the Commission's analysis in the *Order and NPRM*¹ regarding the nature of the market for inmate calling; the market implicates unique security and public policy considerations; competition among ICS providers is robust; and detention facilities extract location rents that can rise to the level of being "exorbitant."² The first policy approach considered, that of encouraging use of debit cards, can be expected to afford only limited relief to purchasers of inmate calling because this approach can only hope to reduce, not eliminate, the cost of bad debt, which is not the largest component of cost, and because cost savings in this area are very likely to be captured as location rents by the confinement facility. Second, the mechanism of rate caps also offers limited promise because of the wide variation of costs between facilities. In order to ensure that the highest cost facility is served, a rate cap would have to equal or exceed the cost of the highest cost facility, affording little or no relief at lower cost facilities. More complicated rate cap plans, which might try to account for cost variation among facilities, would introduce higher administrative costs and uncertainty as to efficacy of the plan. Finally, a prohibition on site commissions in new contracts offers the greatest promise of reducing cost to purchasers of inmate calling. Such a prohibition, together with pricing flexibility allowing ICS providers to reduce prices in new proposals, would eliminate the largest single component of cost, eliminate the prospect of further cost reductions being captured in location rents, and guide competition among ICS providers into technical innovation, service to facilities and prices paid for inmate calling.

The Market for Inmate Calling Services

3. The Commission's *Order and NPRM* correctly points out the essential characteristics of the ICS market. Because of unique security considerations, inmates are not

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, FCC 02-39, Released February 21, 2002 (*Order and NPRM*).

² *Order and NPRM* at ¶ 26.

afforded choice among alternative carriers or choice between use of a payphone or a cell phone.³ ICS providers encounter a variety of costs of accommodating these security concerns that do not arise in the market for payphone services available to the public at large.⁴ The costs of providing ICS, like the costs of providing payphone services to the general public, are largely fixed or common costs that do not enter into the marginal cost of any individual call. Despite the lack of competitive alternatives for any specific call, competition among ICS providers for contracts to serve a particular confinement facility is vigorous; the *Order and NPRM* mentions the practice of competitive bidding⁵ and implies that it is not a “thin” market by noting that “numerous commenters that provide payphone service state that they are, in fact, adequately compensated for inmate calls, and they should be able to provide service in the event that the Coalition members cannot.”⁶

4. My examination of the ICS market during the course of a proceeding before the New Mexico Public Regulation Commission⁷ reached the conclusion that effective competition exists among ICS providers competing for a contract to serve a particular confinement facility.⁸ This conclusion follows from confinement facilities’ common use of competitive bidding practices in selecting an ICS provider and the presence of many bidders, unconstrained by substantial barriers to entry, participating in competitive bidding. My conclusion of the existence of effective competition among ICS providers was corroborated by analysis of T-NETIX’s⁹ results of operations, based on 5 years of audited financial statements and internal accounting records specific to New Mexico. In the period examined, T-NETIX recovered sufficient revenue

³ *Order and NPRM* at ¶ 12.

⁴ *Order and NPRM* at ¶ 9.

⁵ *Order and NPRM* at ¶ 10.

⁶ *Order and NPRM* at ¶ 39.

⁷ *Before the New Mexico Public Regulation Commission, Case No. 3317: In the Matter of the Investigation into the Rates and Charges of Institutional Operator Service Providers*, Direct Testimony of Richard Cabe, Ph.D. on behalf of Gateway Technologies, Inc., filed 21 August, 2000 (*New Mexico Direct Testimony*), attached as Exhibit 1.

⁸ *New Mexico Direct Testimony*, Exh. 2 at page 5.

⁹ My New Mexico Direct Testimony refers to Gateway Technologies, Inc., which was acquired by T-NETIX in 1999.

from New Mexico operations to cover direct costs and make a contribution to overhead. This analysis was based on an overall return on investment of 10.85% calculated from the cost of equity, cost of debt and capital structure most recently determined for USWest by the New Mexico State Corporation Commission.¹⁰ Due to the specialized character of the equipment involved and lack of regulatory treatment of depreciation lives for such equipment I adopted T-NETIX's depreciation life of 5 years. In any case, equipment cost amounted to only about 4% of revenue.¹¹ There was no evidence of the company overall or its New Mexico operations earning more than a competitive return.

Site Commissions

5. My investigation of the ICS market in New Mexico corroborates the Commission's finding that site commissions amount to location rents extracted by the confinement facility. By controlling every aspect of inmates' access to telecommunications, confinement facilities are in a position to exercise the full measure of monopoly power. Facilities rely on ICS providers to actually deliver service to inmates and collect charges for that service. The ICS provider contracted to serve a facility will do so subject to the state commission's supervision of rates, terms and conditions, and in accordance with the facility's security requirements. The facility's contracting process, based on bidding among competing ICS providers, ensures that the expected value of any potential profit achievable under existing state regulation will accrue to the facility – not to the ICS provider. Site commissions paid to facilities comprise the largest single component of T-NETIX rates, averaging 33% over the 5 years examined.¹² The location rents extracted by the facility could be collected in any of several forms: commission payments calculated as a percentage of revenues, an initial lump sum payment of a “signing bonus,” provision of equipment or services unrelated to telecommunications services for inmates, or any other thing of value to the facility. While states typically have and exercise jurisdiction over

¹⁰ *Before the New Mexico State Corporation Commission, In the Matter of the Rates and Charges of U S West Communications, Inc., Docket No. 92-227-TC, Findings of Fact, Conclusions of Law, and Order.*

¹¹ *New Mexico Direct Testimony*, Exh. 2 at page 11.

¹² *Id.*

rates charged for service to inmates, the amount of location rents currently received by facilities indicates the inability of states to ensure that the benefits of competition accrue to the end user inmates and their families.

6. Competition among ICS providers, as presently structured, will work very effectively for the benefit of confinement facilities. ICS providers expecting to be bidding for contracts with facilities have an incentive to undertake investments in innovations and service improvements if they can be expected to serve the interests of the facility. ICS providers must adopt the best available technology and operate efficiently in order to win contracts. As noted in my New Mexico testimony and in the *Order and NPRM*,¹³ the benefits of competition do not presently reach those who pay for inmate calling. In particular, competition among ICS providers does not act to constrain prices charged to those who pay for inmate calling. Prices charged for inmate calling typically require approval of state commissions, and competition forces any potential for profit under state-approved prices to be offered to the facility as a location rent.

Debit Cards and Prepaid Accounts

7. Debit cards, or prepaid accounts, offer some promise of reducing costs of inmate calling. However, they can only hope to reduce – not eliminate – costs of billing and collection, and bad debt. Billing and collection and bad debt amounted to about 22% of revenue in the analysis I conducted in New Mexico.¹⁴ The cost savings that can be achieved through debit cards or prepaid accounts will be limited by several considerations. First, alternative collection mechanisms will involve administrative costs that are different from standard billing and collection costs, but do not eliminate the cost of billing and collection. If participation in a debit card or prepaid account program is optional, it may suffer from a form of adverse selection; participants in the program may disproportionately represent those who would have paid bills in any case, and bad debt will not be greatly reduced. Participation in prepaid account programs

¹³ *Order and NPRM* at ¶ 12.

¹⁴ *New Mexico Direct Testimony*, Exh. 2 at page 11.

will also be limited by the time and cost of setup, which is specific to each inmate and facility. If an inmate will not be at a particular facility for long enough to allow setting up an account, participation will not be possible. If the transaction cost of establishing an account is undertaken, but the inmate is promptly released or transferred, those initial costs may never be recouped. Availability of programs may also be limited by choice of the confinement facility.

8. Most importantly, as the Commission observed, unless the problem of location rents is solved, competition among ICS providers to win contracts will result in cost savings being captured by facilities. Debit cards, for example, could be issued by the ICS provider to incorporate the lowest possible rate for inmate calling, yet the facility could sell these cards to inmates with a mark-up calculated to reach the monopoly price. Finally, if the Commission adopts my recommendation of a prohibition of location rents in new contracts, there will be much less need for policy interventions to encourage cost reducing innovations that work to the benefit of those who pay for inmate calling.

Rate Caps

9. At first glance, imposition of a rate cap is an attractive approach to the problem of high prices for inmate calling. In practice, the rate cap mechanism, which many states have had in place even as the present problem has developed, is of limited use.¹⁵ The essential problem of the rate cap approach is noted in the *Order and NPRM* with reference to the ICSPC's proposal to impose a federal surcharge on inmate calling: "[M]any claim that, given the great diversity of local costs and conditions, a national surcharge on local inmate calls would result in excessive recovery in many states and confinement facilities."¹⁶ The very great diversity of costs and calling patterns at the nation's many different confinement facilities would cause any rate cap to be a very crude instrument. If a rate cap is set too low it will preclude high cost facilities from

¹⁵ In the course of participation in the New Mexico proceeding mentioned above, I noted that T-NETIX's rate for local calling from inmate payphones is less than half that of the dominant local exchange carrier, Qwest. T-NETIX rates are far below the rate caps in place in many states, but competition to win contracts with facilities that demand high site commissions inevitably puts upward pressure on rates.

¹⁶ *Order and NPRM* at ¶ 26.

finding ICS providers willing to serve the facility at rates below the cap. For this reason, a rate cap must be set high enough to allow ICS providers to recover costs at the least attractive facility to which the cap will apply. For high-cost facilities, a small error in design of the cap could threaten the availability of service. For low cost facilities, such a high rate cap affords very little constraint on prices. A more refined approach to design of a rate cap mechanism might take into consideration determinants of cost and revenue potential flowing from likely calling patterns at particular facilities, but such an approach would involve substantial costs of processing information concerning the profitability of offering ICS at particular facilities.

10. There is probably no more efficient way to process information regarding the potential profitability of an ICS offering at a particular facility – as would be required by a well designed rate cap plan – than the competitive bidding process currently in use by facilities letting contracts. The need for a policy intervention does not arise from any failure of competition among ICS providers. In the present case competition is vigorous and appears to make a very good assessment of relative cost and revenue potential of different facilities. The fact that the problem to be addressed does not stem from an absence of competition among ICS providers suggests that a rate cap plan may not be the best policy instrument. Competition is vigorous, but the object of competition is misplaced; ICS providers compete for the favor of facilities, rather than those who pay for inmate calling. Most fundamentally, rate caps cannot address the problem of high site commissions. A rate cap that neglects site commission payments would deny the provider an opportunity to recover legitimate costs that were essential to the ICS provider's winning the contract.¹⁷ In the next section of this Declaration I recommend an approach that would rely on competition among ICS providers, but redirect the benefit of that competition to those who pay for inmate calling.

Prohibition or Limitation on Site Commissions in New Contracts

11. If competition among ICS providers were focused on prices paid for inmate calling,

¹⁷ As the Commission recognizes, “[t]o have a realistic chance of winning a contract, the bidder must include an amount to cover commissions paid to the inmate facility.” *Order and NPRM* at ¶ 10.

instead of location rents to be paid to facilities, the benefit of competition would accrue to those who pay for inmate calling. Contrary to a lack of vigorous competition, which might call for a mechanism such as rate caps, the ICS market is troubled by something more akin to misdirected competition. Competitors cannot fail to deliver all possible benefits of competition to confinement facilities rather than to those who pay for inmate calling. An ICS provider offering low prices for inmate calling and no location rents for facilities would not win contracts, and would not be providing service to inmates. By prohibiting ICS providers from entering into new contracts that provide for location rents to facilities, the Commission would take a substantial step toward redirecting competition to the benefit of those who pay for inmate calling.¹⁸ In the present regime, confinement facilities commonly demand high site commissions without sufficient regard to the resulting charges imposed on those who pay for inmate calling. If location rent payments to facilities were prohibited, facilities would place a greater weight on bidders' proposals regarding charges for inmate calling.

12. While a simple prohibition of new contracts paying site commissions would be an important step, it cannot be expected to entirely redirect the focus of competition among ICS providers. As discussed above, location rents can take the form of anything of value to confinement facilities. A Commission prohibition on new contracts paying location rents will need to carefully distinguish between contract provisions that respond to legitimate security interests of the confinement facility and other provisions that amount to location rents.

13. A very promising approach has been taken by the State of New Mexico.¹⁹ The New Mexico Legislature adopted a statute that imposes an affirmative duty on confinement facilities to award a contract that “provides the lowest cost of service to inmates or any person who pays

¹⁸ I recommend that the Commission prohibit ICS providers from entering into new contracts that provide for location rents that provide for location rents to be paid to the facility. Existing contracts that contain provisions that amount to payment of location rents would come under this prohibition as they expire and are replaced by new contracts, providing an orderly transition to the new form of regulation.

¹⁹ NMSA 1978, Section 33-14-1 (“*New Mexico Statute*”), attached as Exhibit 3.

for inmate telecommunications services.”²⁰ In this approach the facility, which holds true monopoly power, is charged to use that power for the benefit of those who pay for inmate calling. While the present situation, which includes “exorbitant location rents,”²¹ developed under a regime of state rate regulation or rate caps, which have limited effectiveness for reasons discussed above, the New Mexico statute provides a model for a direct, procompetitive approach that I believe will bring substantial relief to those who pay for inmate calling.

14. In order for competition among ICS providers to function for the benefit of those who pay for inmate calling, ICS providers must be able to reduce prices offered in response to a particular facility’s request for proposals. This may be inconsistent with many state regulatory regimes, which typically establish a uniform price or price ceiling to apply uniformly to all service provided in the state. This requirement of uniform pricing is an impediment to competition based on price charged for inmate calling, and probably contributed to development of the present combination of high prices and high location rents. If competition among ICS providers were focused on price charged for inmate calling rather than on location rents paid to facilities, each facility would evaluate bids and chose the provider with the lowest tariffed prices. Given the variation in cost of serving different facilities, a provider with very low tariffed prices would win the contract to serve the lowest cost facility in a state. If providers must charge the same prices at every facility served in the state, the low-priced provider that wins the contract to serve the state’s lowest cost facility will not bid to serve any other, higher cost, facilities. If each ICS provider must charge uniform prices at all facilities served in a state, providers will only bid to serve facilities with costs below the provider’s tariffed prices, and can only hope to win the contract to serve a small number of facilities with costs very close to the provider’s tariffed prices. Thus, requiring each provider to maintain uniform prices in a state will artificially restrict the pool of potential bidders for the contract to serve any particular facility, and interfere with

²⁰ *New Mexico Statute*, ¶ A. The statute also recognizes the confinement facility’s legitimate “technical and functional requirements.”

²¹ *Order and NPRM* at ¶ 26.

competition to serve facilities at the lowest possible cost to those who pay for service to inmates. In essence, competition among ICS providers at the facility level cannot be based on prices charged to those who pay for inmate calling unless providers are free to set prices at the facility level, rather than uniformly throughout the state.

Conclusion

15. The most promising mechanism by which the benefits of competition might be directed to those who pay for inmate calling is a prohibition or limitation on site commissions or other forms of location rent sought by confinement facilities. This approach addresses the problem directly. Other approaches are either unnecessary if the focus of competition is shifted to prices paid for inmate calling, or ineffective if facilities continue to extract what the Commission considers to be “exorbitant” location rents.

16. This concludes my declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 22 May, 2002.

Richard Cabe

Richard Cabe

EXHIBIT 1

Curriculum Vitae of Dr. Richard Cabe

Richard Cabe, Ph.D.

President
Richard Cabe, Inc.
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Salida, CO 81201

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Education

Ph.D., Economics, University of Wyoming, 1988
Public regulation & Industrial organization
Natural resource & Environmental economics

M.A., Economics, Pennsylvania State University, 1980
Mathematical economics
History of economic thought

B.A., Mathematics, University of Maine at Presque Isle, 1978
Minor in Business Administration

AREAS OF INTEREST

Telecommunications industry
Microeconomics of technological change
Markets for real estate

EXPERT TESTIMONY AND REPORTS:

Before the Minnesota Public Utilities Commission, PUC Docket No. P-421/C1-01-1375: In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices; Reply Testimony filed March 18, 2002, Surreply Testimony filed May 9, 2002 on behalf of Covad Communications Company; hearing testimony May 21, 2002

Before the Washington Utilities and Transportation Commission, Docket No. UT-003013: In the Matter of the Continued Costing and Pricing of Unbundled Network Elements and Transport and Termination; Supplemental Response Testimony filed February 14, 2002, Second Supplemental Response Testimony filed March 25, 2002 on behalf of Covad Communications Company; hearing testimony May 9, 2002

Before the Federal Communications Commission, CC Docket No. 01-277: In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Georgia and Louisiana; Declaration of Sherry Lichtenberg, Rene Desrosiers, Karen Kinard and Richard Cabe, on behalf of WorldCom, Inc.; Filed 22 October, 2001; Reply Declaration filed 13 November, 2001

Before the Public Utilities Commission of Nevada, Docket No. 00-7031: In re petition for review and approval of the draft application of SBC COMMUNICATIONS, INC., NEVADA BELL TELEPHONE COMPANY and WOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC., d/b/a Nevada Bell Long Distance, for provision of in-region interLATA services in Nevada; Prepared Testimony of Richard Cabe, filed 6 August, 2001, on behalf of Commission Staff

Before the Mississippi Public Service Commission, Docket No. 2000-UA-999; Direct and Rebuttal Testimony filed April 16, 2001, on behalf of WorldCom, Inc.; hearing testimony 21 June, 2001

Before the Washington Utilities and Transportation Commission, Docket No. UT-003013 Part B: In the Matter of the Continued Costing and Pricing of Unbundled Elements, Transport and Termination and Resale; Response testimony filed 23 October, 2000, Supplemental Response testimony filed 20 December, 2000, on behalf of Rhythms Links Inc. and Covad Communications Company

Before the New Mexico Public Regulation Commission, Case No. 3317: In the Matter of the Investigation into the Rates and Charges of Institutional Operator Service Providers; Direct Testimony filed 21 August, 2000 on behalf of Gateway Technologies, Inc.; Rebuttal Testimony filed 31 October, 2000; Further Direct Testimony filed 10 August, 2001; Further Rebuttal Testimony filed 31 August, 2001; Supplemental Rebuttal Testimony filed 13 September, 2001; Hearing testimony 1 October, 2001

Before the Washington Utilities and Transportation Commission, Docket No. UT-003013 Part A: In the Matter of the Continued Costing and Pricing of Unbundled Elements, Transport and Termination and Resale; Direct testimony filed 19 May, 2000, Response testimony filed 21 July, 2000, Rebuttal testimony filed 4 August, 2000, on behalf of Rhythms Links Inc. and Covad Communications Company; hearing testimony 25 August, 2000

Before the Washington Utilities and Transportation Commission, Docket No. UT-960369: In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination and Resale; Direct testimony on behalf of MCI Worldcom filed 15 December, 1999; rebuttal testimony filed 7 February; hearing testimony 28 February, 2000

Before the New Mexico Public Regulatory Commission, Utility Case No. 3111, In the Matter of the Implementation of a State Universal Service Fund, Hearing testimony December 1, 1999 on behalf of MCI Worldcom

Before the Tennessee Regulatory Authority: "Public Policy considerations for Regulation of the InterLATA Telecommunications Market in Tennessee", Statement of Richard Cabe on behalf of MCI Worldcom in the Tennessee Regulatory Authority's consideration of amendments to the IXC Rule; filed September 14, 1999

Before the Iowa Utilities Board, Docket No. INU-99-3: In the Matter of Petition for Determination of Effective Competition, for Waiver of Accounting Plan Requirement and for Expedited Consideration; Direct Testimony filed September 10, 1999; Hearing testimony October 12, 1999

Before the Public Utilities Commission of the State of Colorado, Docket No. 99A-161T: In the Matter of the Application of U S West Communications, Inc. to Reduce Business Basic Exchange and Long Distance Revenues upon Receipt of the Colorado High Cost Support Mechanism in Accordance with Decision No. C99-222; Direct Testimony filed August 6, 1999

State of Florida Division of Administrative Hearings DOAH Case No. 98-2445RP: Telephonic Deposition of Dr. Richard Cabe in the matter of Florida Competitive Carriers Association, Inc.; Telecommunications Resellers Association, Inc.; AT&T Communications of the Southern States, Inc.; MCI Telecommunications Corporation; and Sprint Communications Company Limited Partnership, Petitioners, v. Florida Public Service Commission, Respondent. August 14, 1998 on behalf of Florida Competitive Carriers Association.

Before the Mississippi Public Service Commission, Docket No. 97-AD-544: Generic Proceeding to Establish Permanent Prices for BellSouth Interconnection and Unbundled Network Elements; Direct Testimony filed January 28, 1998; Rebuttal testimony filed March 13, 1998; Hearing testimony March 31, 1998; On behalf of AT&T Communications of the South Central States, Inc.

Before the North Carolina Utilities Commission, Docket No. P-100, Sub 133d: Review of Cost Studies, Methodologies, and Cost-Based Rates for Unbundled Network Elements; Direct

testimony filed December 15, 1997; Rebuttal testimony filed March 9, 1998; Hearing testimony March 25, 1998; On behalf of AT&T Communications of the Southern States, Inc. and MCI Telecommunications Corporation

Before the South Carolina Public Service Commission, Docket No. 97-374-C: Proceeding to Review BellSouth Telecommunications, Inc.'s Cost for Unbundled Network Elements and Interconnection Arrangements; Direct Filed November 17, 1997; Hearing Testimony December 16, 1997; On Behalf of AT&T Communications of the Southern States, Inc.

Before the Public Utilities Commission of the State of Colorado, Docket No. 97M-063T; On Behalf of AT&T Communications of the Mountain States, Inc. and MCI Telecommunications Corporations; In the Matter of the Administration of the Colorado High Cost Fund and the Development of a Cost Model; Direct Testimony filed in the name of William Lehr; Hearing Testimony 1 December, 1997

Before the North Carolina Utilities Commission, Docket No. P-55, SUB 1022; Hearing Testimony September 30, 1997; In RE: Notification of Intention to File a Section 271 Petition for In-Region InterLATA Authority with the FCC Pursuant to the Telecommunications Act of 1996; Filed September 3, 1997; On Behalf of MCI Telecommunications Corporation and AT&T Communications of the Southern States

Before the Alabama Public Service Commission, Docket No. 26029, Review of Cost Studies; Filed August 29, 1997; Hearing Testimony September 24, 1997; On Behalf of MCI Telecommunications Corporation and AT&T Communications of the South Central States

Before the Georgia Public Service Commission, Docket No. 7061-U, Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services; Direct filed April 30, 1997; Rebuttal and Supplemental filed August 29, 1997; Surrebuttal filed September 8, 1997; Hearing Testimony September 18, 1997; On Behalf of MCI Telecommunications Corporation and AT&T Communications of the South Central States

Before the Louisiana Public Service Commission, Docket No. 22022/22093; In RE: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies; Filed August 25, 1997; Hearing Testimony 12 September, 1997; On Behalf of MCI Telecommunications Corporation and AT&T Communications of the South Central States

Before the Public Service Commission, Commonwealth of Kentucky, In the Matter of: Inquiry into Universal Service and Funding Issues, Administrative Case No. 360, Filed July 11, 1997; Hearing Testimony August 6, 1997; on behalf of MCI Telecommunications Corporation

Before the Florida Public Service Commission, In The Matter of the Petition of MCI Telecommunications Corporation for Arbitration with United Telephone Company of Florida and Central Telephone Company of Florida concerning interconnection rates, terms and conditions pursuant to the Federal Telecommunications Act of 1996, Docket No. 961230-TP;

Direct filed October 11, 1996; Rebuttal filed November 19, 1996; Hearing Testimony December 19, 1996; on behalf of MCI Telecommunications Corporation

Before the Arizona Corporation Commission, In The Matter of The Petition Of MCImetro Access Transmission Services, Inc. For Arbitration Of Interconnection Rates, Terms, And Conditions Pursuant to 47 U.S.C. § 252(b) Of The Telecommunications Act Of 1996, Docket No: U-3175-96-479; October 18, 1996; on behalf of MCImetro Access Transmission Services, Inc.

Before the Public Utility Commission of Texas, In The Matter of The Petition Of MCImetro Access Transmission Services, Inc. For Arbitration Of Interconnection Rates, Terms, And Conditions Pursuant to 47 U.S.C. § 252(b) Of The Telecommunications Act Of 1996, Docket Nos. 16300, 16355, October 14, 1996; on behalf of MCImetro Access Transmission Services, Inc.

Before the Public Utilities Commission of the State of Oregon, In The Matter of The Petition Of MCImetro Access Transmission Services, Inc. For Arbitration Of Interconnection Rates, Terms, And Conditions Pursuant to 47 U.S.C. § 252(b) Of The Telecommunications Act Of 1996, ARB 9, October 11, 1996; on behalf of MCImetro Access Transmission Services, Inc.

Before the Utah Public Service Commission, In the Matter of the Petition for Arbitration, Consolidation and Request for Agency Action of MCIMetro Access Transmission Services, Inc. Pursuant to 47 U.S.C. Section 252, Docket No. 96-095-01; Direct testimony filed 8 November 1996; Rebuttal testimony filed 22 November, 1996

Before the Iowa Utilities Board, In Re MCI Metro Access Transmission Services, Inc., Petitioning Party, and U S West Communications, Inc., Responding Party, Docket No. ARB-96-2, September 6, 1996; on behalf of MCImetro.

"Before the Public Utilities Commission of Oregon:UM 351, In the matter of the Investigation into the Cost of Providing Telecommunications Services, Electric Lightwave, Inc.'s Response to Issues 1, 3, and 4, filed 30 August, 1993"

Before the Washington Utilities and Transportation Commission, In the Matter of the Complaint of GTE Northwest Incorporated against Pacific Northwest Bell Telephone Company with respect to Interexchange Traffic Utilizing Extended Area Service Facilities, Docket No. U-88-1719-F; on behalf of U.S. Metrolink Company; Cross Examination December 1989

"Affidavit of Richard Cabe", in Support of Motion of U.S. MetroLink Company for Suspension and Hearing in the matter of U. S. West Communications Tariff Filing 2056T before the Washington Utilities and Transportation Commission, September 1989

Implementation of the Colorado Telecommunications Act of 1987: An Evaluation", Report to the Colorado Public Utilities Commission, with Vinson Snowberger, June 30, 1988

Before the Energy and Utilities Committee of the Washington State House of Representatives, to present the Annual Report of the Utilities and Transportation Commission on the Status of the Washington Telecommunications Industry, February 1987

Before the Washington Utilities and Transportation Commission, In the Matter of Application of Pacific Northwest Bell for Banded Tariffs, Cause no. U-86-40; Cross Examination September 1986

Before the Washington Utilities and Transportation Commission, In the Matter of the Petition of AT&T of the Northwest for Classification as a Competitive Telecommunications Company, Cause no. U-86-113; Cross Examination April 1986

Cost of Service Information for Implementation of the Regulatory Flexibility Act, Report to the Washington Utilities and Transportation Commission, July 1985

"On Reducing Errors in Air Pollution Epidemiology," with S. Atkinson and T.D. Crocker, draft report, Institute for Policy Research, University of Wyoming to U.S. Environmental Protection Agency for Grant CR808893-01, April 1982.

PUBLICATIONS:

"Multimedia Economics" Instructional CD ROM included in 5 CD MBA Boxed Set, Pro One Software, Las Cruces, New Mexico, 1998

"Issues, Indicators, and Baselines: The Benefits and Hazards of Using a Natural Resource Accounting System in the RCA Analytical Process", with Jason Shogren and Stanley R. Johnson, in Evaluating Our Nation's Natural Resources, edited by T. Robertson, B. English, R. Alexander, and P. Rosenberry, University of Tennessee Agricultural Experiment Station, 1996

"CEEPES: An Evolving System for Agroenvironmental Policy", with Aziz Bouzaher, Stanley Johnson, Andrew Manale and Jason Shogren, p 67-89 in Integrating Economic and Ecological Indicators, edited by J. Walter Milon and Jason Shogren, Praeger, Westport CT, 1995

"Metamodels and Nonpoint Pollution Policy in Agriculture", with Aziz Bouzaher, Alicia Carriquiry, Phil Gassman, P. G. Lakshminarayan, and Jason Shogren, Water Resources Research 29, p. 1579-1587, June 1993

"The Effects of Environmental Policy on Tradeoffs in Weed Control Management", with Aziz Bouzaher, David Archer, Alicia Carriquiry and Jason Shogren, The Journal of Environmental Management, 36, #1, 69 - 80, Sept. 1992

"The Regulation of Non-Point Source Pollution Under Imperfect Information", with Joseph Herriges, The Journal of Environmental Economics and Management 22, 134-146, 1992

"Equilibrium Diffusion of Technological Change Through Multiple Processes", Technological Forecasting and Social Change 39, Number 3, May 1991

"Natural Resource Accounting Systems and Environmental Policy Modeling", with Stanley R. Johnson, The Journal of Soil and Water Conservation 45 # 5, p 533-9, September/October 1990

"Network Differentiation and the Prospects for Competition in Local Telecommunications", in Sixth Annual Current Issues Challenging the Regulatory Process, The Center for Public Utilities, New Mexico State University, 1990

"Prospects for Competition in the Local Exchange Telecommunications Industry", in Telecommunications Regulation in Washington State, Washington Utilities and Transportation Commission, January 29, 1989

"Rate of Return Regulation of Multiproduct Firms," Doctoral Dissertation, University of Wyoming, Department of Economics, 1988

Annual Report to the Legislature on the Status of the Washington Telecommunications Industry, principal author for the Washington Utilities and Transportation Commission, January, 1987

"Normative Economics and the Acid Rain Problem" with L.S. Eubanks, in T.D. Crocker, ed., Perspectives on the Economics of Acid Deposition, 1983, Ann Arbor Michigan: Ann Arbor Science Press.

"Intertemporal and Intergenerational Pareto Efficiency: An Extended Theorem," Journal of Environmental Economics & Management 9, p 355-360, December 1982.

"Investment Criteria for Projects with Intergenerational Effects," Masters Thesis, Pennsylvania State University, Department of Economics, 1982.

EMPLOYMENT

Teaching:

Associate professor, Department of Economics and International Business, New Mexico State University; 1994 - 1999, Tenure Granted 1995, Assistant professor 1990 to 1994: Antitrust Policy and Monopoly Power; Graduate Microeconomic Theory; Mathematical Economics; Industrial Organization; Seminar in Regulatory Economics; Economics of Risk, Uncertainty and Information; Game Theory; Advanced Seminar in Industrial Organization; Econometrics; Managerial Economics; Introduction to Economics; Microeconomic Principles

Assistant professor, Department of Economics, West Virginia University, 1983-1984: Graduate Environmental Economics; Principles of Economics.

Lecturer, Department of Economics, University of Wyoming, 1982-1983: Money & Banking; Intermediate Microeconomics.

Teaching assistant, Department of Economics, University of Wyoming; Fall, 1980.

Teaching assistant, Department of Economics and Department of Mathematics, Pennsylvania State University, five quarters in academic years 1978-1979 and 1979-1980.

Public Policy:

Economic Consultant, 1988. Performed economic analysis concerning regulation of the telecommunications industry under contract to the Colorado Public Utilities Commission and the Washington Utilities and Transportation Commission.

Associate, RCG/Hagler, Bailly, Inc. 1987-1988. Assignments included litigation support in Bell Operating Company requests for lessened regulation and a study of the effect on property values of proximity to a major defense facility containing hazardous waste sites.

Telecommunications Regulatory Flexibility Manager, Washington Utilities and Transportation Commission, 1985-1987. Duties included conduct of investigations and preparation of recommendations, primarily with regard to the telecommunications industry; preparing evidence, assisting in cross examination and presenting expert testimony; and serving as a member of the Federal - State Joint Board Staff, FCC Docket 86-297, concerned with revising jurisdictional separations of telecommunications company costs and revenues.

Research:

Post-Doctoral Research Associate, Center for Agricultural and Rural Development, Department of Economics, Iowa State University, September 1988 to August 1990. Participate in policy-oriented economic research and serve as liason to the Economic Research Service, USDA.

Research Associate, Department of Economics, University of Wyoming, spring 1981 through summer 1982. Theoretical modelling, data construction, and analysis on health effects of air pollution and application of economic methods to ecosystem modelling. Under the direction of Thomas Crocker.

Research assistant, Department of Economics, University of Wyoming, summer 1980. Data construction and analysis on health effects of air pollution. Under the direction of Ralph d'Arge.

Research assistant, Department of Economics, Pennsylvania State University, summer and fall 1979. Theoretical and empirical work with Assymmetric Quadratic Gorman Polar forms (flexible functional forms with explicit analytical solutions for the dual cost or expenditure function). Under the direction of Jonathon Dickinson.

Other Employment:

One year, Administrative Research Assistant, Aroostook County Action Program, Presque Isle, Maine.

Four years, U.S. Coast Guard, Electronics Technician.

AWARDS

Washington Utilities and Transportation Commission employee award for contributions to a positive work environment, Olympia, Washington, December 1986.

Award of merit, College of Commerce and Industry, University of Wyoming, 1981.

John S. Bugas fellow, University of Wyoming, academic year 1980-1981.

PERSONAL

Born July 16, 1950; Pulaski County, Arkansas

Married, one child

Second language: Spanish

EXHIBIT 2

**Direct Testimony of Dr. Richard Cabe, Ph.D., on Behalf of Gateway
Technologies, Inc.**

August 21, 2000

New Mexico Public Regulation Commission, Case 3317

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE INVESTIGATION INTO)
THE RATES AND CHARGES OF INSTITUTIONAL)
OPERATOR SERVICE PROVIDERS)

Case No. 3317

**DIRECT TESTIMONY OF
RICHARD CABE, PH.D.
ON BEHALF OF
GATEWAY TECHNOLOGIES, INC.**

August 21, 2000

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Richard Cabe. My business address is 219 I Street, Salida, Colorado,
4 81201.

5 **Q. DR. CABE, PLEASE BRIEFLY DESCRIBE YOUR PROFESSIONAL**
6 **BACKGROUND.**

7 A. I am an economist in private practice, specializing in economic analysis of
8 regulatory matters in the telecommunications industry. I have presented
9 testimony in matters concerning regulation or competition in the
10 telecommunications industry to the public utility commissions of Alabama,
11 Arizona, Colorado, Florida, Georgia, Iowa, Kentucky, Louisiana, Mississippi,
12 New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah
13 and Washington. I have also assisted in preparation of comments filed before the
14 FCC. Until May of 1999, I was employed as Associate Professor of Economics
15 and International Business at New Mexico State University. In that position, I
16 taught graduate and undergraduate economics courses and arranged the
17 telecommunications curriculum for conferences sponsored by the Center for
18 Public Utilities. Over the last several years, I offered graduate courses in
19 Industrial Organization, Microeconomic Theory, Antitrust and Monopoly Power,
20 Game Theory, Public Utilities Regulation, and Managerial Economics for MBA
21 students. My experience with telecommunications regulation began when I was
22 employed by the Washington Utilities and Transportation Commission. During

1 my employment at the Washington Commission, I served as a staff member to the
2 Federal - State Joint Board in CC Docket No. 86-297. When I left the
3 Washington Commission staff to complete my doctoral degree, my title was
4 Telecommunications Regulatory Flexibility Manager. Additional information
5 concerning my qualifications is provided as Exhibit A.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. Gateway Technologies, Inc. (Gateway) asked me to provide testimony discussing
8 the cost of service and reasonableness of rates that Gateway currently charges,
9 and to prepare a recommendation to the Commission regarding what further
10 action in this case would be appropriate and in the public interest.

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

12 A. I conclude that the rates charged by Gateway must be regarded as reasonable.
13 This is true for several reasons. First, prices in the market for institutional
14 operator services are the outcome of a competitive process that prevents providers
15 from earning more than a competitive return. There is no possibility of a firm in
16 the institutional operator services industry exercising market power – the
17 traditional rationale for regulation of rates. Second, my analysis of the structural
18 and institutional characteristics of the market, corroborated by analysis of
19 Gateway's New Mexico costs and revenue, demonstrates that Gateway's charges
20 are reasonable. Third, the rates charged by Gateway in New Mexico differ very
21 little from the rates applicable to operator services offered to the general public.
22 Insofar as some providers' rates may differ significantly from rates charged to the

1 general public, the differences arise from the forces of competition, which require
2 firms to seek innovative ways to serve the interests of those who choose their
3 services – in this case the penal institutions who select an institutional services
4 provider from the competitive field. Finally, some public policy concerns
5 involved in inmate telephone service may reach beyond the normal jurisdiction
6 and area of expertise of state regulatory commissions. My testimony discusses
7 possible responses to these concerns, but I make no recommendation before an
8 opportunity to examine information and evidence submitted by other parties.

9 II. THE MARKET FOR INSTITUTIONAL OPERATOR SERVICES

10 Q. PLEASE DESCRIBE THE PRODUCT IN THIS MARKET.

11 A. The only product in this market is voice telephony service for the use of inmates
12 incarcerated in correctional institutions. The service is similar to public payphone
13 service in some respects, but only collect calls are allowed, and certain qualitative
14 characteristics of the service are specified by the government body which
15 manages the institution from which the service is provided. In particular, the
16 institution in which the service is provided typically specifies qualitative
17 characteristics of the product related to circumstances unique to correctional
18 facilities, including security, call fraud, and call blocking for certain numbers.

19 Q. PLEASE DESCRIBE THE MARKET FOR INSTITUTIONAL OPERATOR
20 SERVICES.

21 A. The market for institutional operator services, like other markets, is best
22 understood as involving an interaction between supply and demand. Supply in

1 the market is determined by providers, and demand is determined by consumers.
2 Several types of firms play roles in providing institutional operator services,
3 corresponding to vertically related segments of the industry¹. Some firms provide
4 premises equipment, such as coinless payphones and the equipment and software
5 that control and monitor the functioning of the payphones. Other firms provide
6 local and long distance network services for calls originating from the payphones
7 in institutions. Still other firms use equipment and network services to actually
8 provide services. Some firms operate in multiple segments of the industry and
9 others operate in a single segment. Services are available in competitive supply in
10 every segment except local network services, where services are available at
11 tariffed prices, terms and conditions. In addition, the correctional institution plays
12 a crucial role on the supply side in this market by supplying space in its premises
13 for location of payphones. In this respect, the institutions play a role analogous
14 to "location providers" in the market for payphone services to the general public.
15 Both correctional institutions and location providers for public payphones collect
16 commissions from payphone service providers for the privilege of placing
17 payphones on their premises.

18 **Q. WHO ARE THE CONSUMERS IN THIS MARKET?**

19 **A.** Both the inmate, who initiates a call, and the called party, who accepts and pays
20 for the call, must be regarded as consumers. However, the role of the consumer in

¹ Segments of an industry are vertically related when one segment is a supplier to the next, as wheat farmers, millers and bakers are vertically related segments of the industry that supplies bread.

1 telephone service for inmates is different than for most products. The institution
2 chooses the provider and specifies certain qualitative dimensions of the product in
3 order to meet the unique security and fraud requirements faced by correctional
4 institutions. Selection of provider and qualitative dimensions of service are
5 functions that are generally left to consumers in a market, but, in the unusual case
6 of telephone service for inmates, neither the inmate nor the called party has a
7 choice among alternative providers, nor can they choose to forego the institution's
8 chosen qualitative enhancements such as fraud prevention software or call
9 blocking for the telephone numbers of certain individuals, such as judges and
10 prosecutors. These qualitative enhancements increase the cost of providing
11 service, and these higher costs must be passed on to consumers who pay for the
12 service.

13 **Q. IS THERE COMPETITION IN THIS MARKET, AND IF SO, HOW DOES**
14 **IT WORK?**

15 **A.** There is definitely competition among institutional operator services providers.
16 The main process through which providers are selected is a competitive bidding
17 process – either a formal evaluation of responses to a request for proposals (RFPs)
18 or an informal solicitation and comparison of quotes. Competition among service
19 providers takes the form of providers offering a package of service characteristics
20 that they hope will be desirable to the institution selecting a provider. This
21 amounts to effective competition and limits providers to a competitive return, just
22 as in an ordinary competitive market.

1 Q. WHY DO YOU CONCLUDE THAT THIS MARKET IS
2 CHARACTERIZED BY EFFECTIVE COMPETITION?

3 A. As a theoretical matter, competition will be effective unless there is some barrier
4 that impedes the working of competition. In this particular case, it is obvious that
5 there are no such barriers. In its analysis of the payphone marketplace for
6 services to the general public, the FCC found the following:

7 A payphone can be removed and used at another location,
8 which facilitates entry and exit. If a PSP can easily redeploy its
9 assets, it will be more willing to place a payphone in response to a
10 small increase in price, because the risk of such placement is
11 lower. In addition, there appear to be no significant scale or scope
12 economies or network externalities that would impede entry of
13 new firms. As a result, barriers to entry appear to be very low. In
14 fact, a large number of firms, both large and small, have entered
15 the industry since it was initially opened to competition in 1984,
16 and those firms have provided competition in at least some
17 segments of the payphone market.²

18 The analysis for institutional operator service providers is essentially
19 identical³. Beyond the theoretical possibility of new entry, there are in fact
20 numerous providers offering to serve correctional institutions when contracts
21 come up for bid. This competitive bidding mechanism is generally very effective
22 in producing the benefits of competition, including responsiveness to the desires
23 of buyers, and prices which include no more than a competitive return for
24 efficient providers. However, since the choice of provider is in the hands of the
25 institution, the inmate who initiates a call and the called party who pays for the

² Report and Order, CC Docket No. 96-128 and CC Docket No. 91-35, released
September 20, 1996, ¶12

1 call cannot deviate from the combination of price and technological
2 characteristics of the service chosen by the institution from among the proposals
3 of competing institutional operator services providers. While this market exhibits
4 competition among providers, it is not a textbook case of a market for a
5 homogeneous product in which price of the product is the only realm in which
6 competition takes place.

7 **Q. WHAT AREAS OTHER THAN PRICE WILL INVOLVE COMPETITION**
8 **IN THIS MARKET?**

9 Because proposals are evaluated and providers selected by the institution,
10 competition among providers will encompass whatever criteria institutions use to
11 evaluate proposals. That is, in order for an institutional operator service provider
12 to secure a service contract with a correctional facility, it must first be selected by
13 the institution, and to do this it must make a proposal that the institution will
14 prefer over the proposals of competitors. Thus, bidders for a contract to provide
15 institutional operator services must propose a package which includes payphones
16 and service to inmates, hardware and software to control and monitor the service
17 afforded to inmates, and perhaps most importantly, a proposed level for the "site
18 commission" – a percentage of revenue that is paid to the institution as a fee for
19 the privilege of placing payphones on the institution's premises. Revenue from
20 site commissions may be used for a variety of purposes. These revenues may, for

³ Institutional operator service providers face higher costs on several fronts because of the special requirements of correctional facilities and characteristics of the populations served, but the differences go to the cost of service, not to the prospects for effective competition.

1 example, enable the institution to purchase facilities and amenities for inmates
2 that otherwise would not be provided or, at the least, would be funded through an
3 additional budget allocation from state and local tax dollars. In evaluating
4 competing proposals the institution is likely to consider each of these
5 characteristics of the proposal, as well as such factors as the provider's reputation
6 for maintaining good service and being responsive to special needs of the facility.
7 Thus, the selection process by which institutional operator services providers gain
8 contracts with institutions is a complex process which encompasses the whole
9 range of characteristics of the services being offered.

10 **Q. YOU MENTIONED THAT THERE MIGHT BE DIFFERENCES**
11 **BETWEEN RATES FOR INSTITUTIONAL OPERATOR SERVICES AND**
12 **OPERATOR SERVICES FOR THE GENERAL PUBLIC, AND THAT**
13 **THESE DIFFERENCES MAY RAISE ISSUES BEYOND THE USUAL**
14 **JURISDICTION AND EXPERTISE OF STATE REGULATORY**
15 **COMMISSIONS. PLEASE EXPLAIN.**

16 **A.** As noted above, institutional operator services providers compete to be selected
17 by institutions, and do so by fashioning their offering to suit the preferences of the
18 institutions. Many providers, including Gateway, in fact set rates with a view to
19 matching the rates of the local exchange carrier, then compete in quality of
20 service and percentage amount of site commission. There is, however, a situation
21 in which providers could set prices for inmate services to be higher, perhaps much
22 higher, than rates charged to other citizens for comparable services. To begin,

1 competition among institutional operator services providers will lead providers to
2 innovate in offering proposals that include a combination of services, rates, and
3 commissions that are most attractive to host institutions. This is a straightforward
4 consequence of competition in any market in which the product is a complex
5 bundle of characteristics. In the context of such competition among providers,
6 and because the institution that selects the operator services provider receives a
7 commission on the provider's revenues, a peculiar incentive arises that may lead
8 to differences between rates for inmates as compared to rates paid by other
9 citizens for comparable services. That is, a host institution which places great
10 importance on its prospective site commission revenues, but largely disregards the
11 rates that will be charged for service provided to inmates, will be likely to select a
12 provider that charges higher rates to inmates than other citizens would pay for
13 comparable services. Indeed, in considering two proposals that are identical in
14 every respect, with the exception that one service provider charges higher rates
15 for inmate service than the other, a host institution that cares only about its site
16 commission receipts would prefer the proposal with the higher rates⁴. This
17 consequence of competition among institutional operator services providers,
18 based on this pattern of preferences on the part of the host institution – a desire to
19 receive the highest possible site commission revenue and more or less complete
20 disregard for providers' charges for inmate services – will surely produce higher

⁴ Technically, there is a limit beyond which the institution would not prefer higher prices. Just as a monopolist doesn't increase price without bound in order to maximize its profit, the institution would find most desirable a proposal that maximizes revenue – and therefore site commissions.

1 charges for institutional operator services than for similar services to other
2 citizens of the State. This result is attributable to the peculiar incentives created
3 by the institutions' preferences and not by a lack of competition or exercise of
4 market power among service providers. Section IV of my testimony discusses the
5 public policy implications of and possible regulatory responses to this scenario.

6 **III. REASONABLENESS OF GATEWAY'S CURRENT RATES**

7 **Q. DO YOU HAVE AN OPINION REGARDING THE REASONABLENESS**
8 **OF GATEWAY'S CURRENT RATES?**

9 **A.** Yes. First, as noted above, Gateway's rates are, on their face, very similar to the
10 charges of New Mexico local exchange carriers for similar services provided to
11 other citizens of the State. Therefore, Gateway's rates do not raise the concern
12 stated in the Commission's July 21, 2000 Notice in this docket regarding
13 reasonableness of rates for services provided to inmates by comparison to rates
14 for similar services provided to other citizens. Insofar as comparability to rates
15 charged to other citizens for similar services creates a presumption of
16 reasonableness, there is no reason to be concerned about the reasonableness of
17 Gateway's rates. Nevertheless, I have examined some of Gateway's audited
18 financial statements and internal accounting records specific to New Mexico and
19 have concluded that Gateway's rates yield no more than a competitive return –
20 and thus are reasonable rates under this test as well.

1 Q. PLEASE DESCRIBE YOUR EXAMINATION OF GATEWAY'S COST OF
2 PROVIDING SERVICE AND THE RETURN FROM THIS SERVICE.

3 A. Table 1 below shows averages, for the years 1994 through 1999, of Gateway's
4 revenue and costs for providing institutional operator services in New Mexico.
5 Following the table is a description of the elements included in the table. The
6 table shows that, on average, Gateway's rates have recovered its direct costs and
7 made some contribution to overhead, but would not support a full allocation of
8 overhead, at least by one likely method of allocation.

Average Results, 1995 - 1999	Amount	Percent of Revenue
Revenue	\$881,513	100%
Equipment costs	31,228	4%
Line costs	67,576	8%
Line installation costs	1,530	--
Long Distance costs	166,576	19%
Billing and Collections	55,658	6%
Bad Debt	140,618	16%
Site Commissions	287,259	33%
Sales Commissions	20,404	2%
Validations	5,423	1%
Maintenance	47,705	5%
Total Direct Costs	\$823,978	93%
Contribution to overhead	\$57,535	7%
Overhead allocation	\$198,783	23%
Fraction of overhead covered	29%	

9
10 Revenue in the table is stated on a "billed revenue" basis, thus bad debt is treated
11 as a cost. Equipment costs include depreciation, return on invested capital, and
12 income tax on the return to equity capital. A five year depreciation life is
13 assumed; cost of debt, equity and capital structure are taken from the
14 Commission's decision in Docket No. 92-227-TC; and a composite tax rate of
15 20.8%, the sum of the lowest federal and New Mexico corporate income tax rates,

1 is assumed. Line costs comprise the monthly service fees paid to local exchange
2 companies for phone lines. Line installation costs are the non-recurring charges
3 paid to local exchange companies to initialize service. Long distance costs are the
4 fees charged by inter-exchange carriers that carry the inmate long distance traffic.
5 Billing & Collections costs consist of charges by OAN, a billing service, to bill
6 and collect charges for calls placed by inmates. OAN maintains billing
7 agreements with local exchange carriers that provide for the local exchange
8 carrier to include Gateway's collect call charges on the called party's monthly
9 phone bill. Site Commissions are commissions paid directly to the institution for
10 the privilege of placing phone systems in their facilities. Sales Commissions are
11 commissions paid to salespersons to maintain the account with the institution.
12 Validation costs are fees paid to a company that keeps a database of valid collect
13 call enabled telephone numbers. This prevents fraud by not allowing the inmate to
14 call pay phones or other phones which cannot be billed for a collect call.
15 Maintenance cost includes costs of employees or contractors who maintain
16 equipment at the facilities. The overhead allocation is a share of Sales, General
17 and Administrative (SG&A) expense determined by calculating dollars of SG&A
18 expense per dollar of revenue, on average, from Gateway's most recent 5 years of
19 audited financial statements for total company operations.

20 **Q. WHAT CONCLUSIONS DO YOU DRAW FROM THIS ANALYSIS?**

21 **A.** It is apparent that Gateway's rates have covered its direct costs, but have not
22 provided any more than a competitive return. If Gateway's New Mexico

1 operations were forced to carry a full allocation of overhead, Gateway's New
2 Mexico operations would not be able to cover total costs. The overhead
3 allocation included in my analysis is conservative because there are a number of
4 costs in Gateway's SG&A that could be regarded as indirect, rather than
5 overhead, costs and attributed to New Mexico direct service sites⁵. The
6 relationship between revenue and costs demonstrated in Gateway's accounting
7 records is consistent with my earlier analysis concluding that competition is
8 vigorous among institutional operator service providers, and that such competition
9 would not allow the sort of excessive returns necessary to find that the rates are
10 unreasonable.

11 **IV. POSSIBLE FURTHER ACTIONS IN THE PUBLIC INTEREST**

12 **Q. WHAT FURTHER ACTION BY THE NEW MEXICO PUBLIC**
13 **REGULATION COMMISSION DO YOU BELIEVE WOULD BE**
14 **APPROPRIATE AND IN THE PUBLIC INTEREST?**

15 **A.** I have no specific recommendations for further action in the public interest at this
16 time, and will reserve comment largely until rebuttal testimony. I would,
17 however, like to briefly discuss two approaches that the Commission might
18 consider. These approaches are, first, imposition of a rate cap, and second, further
19 study and a recommendation to the legislature for a more comprehensive solution.

⁵ Gateway's SG&A includes several types of cost that a more detailed cost analysis would attribute to specific operations. For example, SG&A includes salespersons' salaries, costs of mileage and expenses, training and supervision. Cost of operating the National Service Center which remotely maintains site operations are included in SG&A, but could be attributed to

1 Q. PLEASE DISCUSS THE OPTION OF RATE CAPS.

2 A. The typical reason for rate regulation is to prevent providers with market power
3 from exercising that market power. In the present instance, institutional operator
4 service providers are engaged in vigorous competition to serve correctional
5 institutions and possess no market power. Insofar as the Commission believes
6 that there is a problem with rates, therefore, the problem arises not from any
7 failure of competition, but rather from the preference of some institutions for
8 providers that will generate the highest site commission revenue. As I discussed
9 above, institutional operator service providers are pressed by the forces of
10 competition to offer proposals for service, rates and site commissions that will be
11 most attractive to institutions. If an institution has little regard for the rates to be
12 charged for service, this competition will lead to high site commission revenue for
13 the institution, and concomitant high rates to cover the cost of high site
14 commissions. Therefore, if the rates paid by parties called by inmates are "too
15 high", this result follows from the criteria that institutions apply in evaluating
16 proposals from competing institutional operator service providers -- not from a
17 failure of competition among providers..

18 Some states have adopted rate caps for institutional operator services, and
19 this may be an appropriate action for this Commission to take, but I would like to
20 mention one reservation about the approach. The imposition of a rate cap is an
21 indirect approach and is likely to have unintended consequences. It involves

individual sites according to some measure of relative usage. All of these attributions of indirect cost would reduce the small (7%) contribution margin reported in the table.

1 regulating prices in an effectively competitive market in order to influence an
2 outcome that is determined, not by any failing of competition, but by choices
3 made by institutions contracting for institutional operator services to be used by
4 inmates. The approach of imposing a rate cap would be expedient, but it might
5 have undesirable consequences in a well functioning competitive market,
6 especially over time, as technology and various prices change. A competitive
7 market will adjust to changing conditions in technology, prices of inputs, and
8 other pertinent market conditions. These adjustments can be difficult to anticipate
9 or implement in a timely manner, and a price cap could impede the market's
10 ability to accomplish these necessary adjustments.

11 I note that any reasonable price cap mechanism would not affect the
12 operations of institutional operator services providers, such as Gateway, who set
13 rates at approximately the same levels as rates charged by local exchange
14 companies for comparable service.

15 **Q. WHAT CRITERIA MUST BE SATISFIED BY A "REASONABLE" RATE**
16 **CAP?**

17 **A.** A rate cap would have to be set so as to allow providers to earn a competitive
18 return. An obvious choice for a cap would be the rates charged by the incumbent
19 local exchange carrier for comparable service. Implementation of a price cap
20 would involve a transition which could create significant disruption for providers
21 and institutions with contracts in place. For instance, a rate reduction in an
22 existing contract would require a change in other terms of the contract – in

1 particular, the site commission. It would be reasonable for a rate cap to be
2 structured as an index over the full "basket" of services offered, and also to allow
3 providers some time to adjust rates to come into compliance with the cap after
4 any changes in the level of the cap.

5 **Q. PLEASE DISCUSS THE ALTERNATIVE OF FURTHER STUDY AND A**
6 **RECOMMENDATION TO THE LEGISLATURE.**

7 **A.** A second alternative that the Commission may wish to consider is to refrain from
8 imposing specific rate regulation and to study the approaches being developed by
9 other authorities. There are two reasons to suggest that the Commission should
10 not take action at this time, but rather should seek legislative and policy guidance
11 on this issue. First, while the Commission has traditionally exercised jurisdiction
12 and has developed expertise in regulating rates where market competition has
13 failed, the issue of rates charged by institutional operator service providers is not
14 an instance of a failure of competition. Rather, it is an instance of competition in
15 a market working very well to serve the preferences of institutions selecting
16 providers of institutional operator services. Insofar as there is a problem, it arises
17 from implementation of those preferences in the choice of a provider. The
18 Commission's traditional realm of activity and expertise do not extend to
19 correcting competitive market outcomes that are intended consequences of the
20 procurement practices of governmental agencies and authorities such as the
21 correctional facilities which select providers of institutional operator services.
22 Further, the present investigation of inmate phone rates raises significant social

1 issues which encompass more than the normal discourse of state regulation of
2 telecommunications providers, and also raise issues concerning choices made by
3 other units of government. Second, there may be creative approaches to the
4 problem that would only become apparent through further study, and which
5 would require legislative authority for implementation. For example, the FCC has
6 examined inmate services in a number of proceedings since 1991 and its
7 decisions, including ongoing analysis in Docket No. 96-128 related to payphone
8 compensation charges, would provide useful information for the Commission's
9 deliberations in this docket, and the decision to make a recommendation to the
10 Legislature could allow consideration of approaches that are currently beyond the
11 Commission's jurisdiction.

12 **V. SUMMARY AND CONCLUSION**

13 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

14 **A.** My examination of the market for institutional operator services concludes that
15 competition can be relied on to ensure that rates do not allow any firm to earn an
16 unreasonable profit for an extended period. I have found that the rates charged by
17 Gateway do not materially exceed the rates charged by the incumbent local
18 exchange carriers to other citizens of the state for services comparable to those
19 provided to inmates. Examination of Gateway revenue and cost information
20 shows that no unreasonable return has been generated by Gateway's rates.
21 Consequently, because Gateway is not realizing above-market returns and has no
22 market power in the institutional operator services market, the classic rationales

1 for rate regulation do not exist. Whether or not the Commission desires to
2 address the unusual competitive characteristic of this market, and the effect of
3 competition on site commissions, is a separate and quite different policy issue
4 from the reasonableness of any one provider's inmate service rates.

5 **Q. DOES THAT CONCLUDE YOUR TESTIMONY AT THIS TIME?**

6 **A. Yes, it does.**

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AREAS OF INTEREST

Telecommunications industry
Microeconomics of technological change
Economics of Management

EXPERT TESTIMONY AND REPORTS:

Before the Washington Utilities and Transportation Commission, Docket No. UT-003013: In the Matter of the Continued Costing and Pricing of Unbundled Elements, Transport and Termination and Resale; Direct testimony filed 19 May, 2000, Response testimony filed 21 July, 2000, Rebuttal testimony filed 4 August, 2000, on behalf of Rhythms Links Inc. and Covad Communications Company

Before the Washington Utilities and Transportation Commission, Docket No. UT-960369: In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination and Resale; Direct testimony on behalf of MCI WorldCom filed 15 December, 1999; rebuttal testimony filed 7 February; hearing testimony 28 February, 2000

Before the New Mexico Public Regulatory Commission, Utility Case No. 3111, In the Matter of the Implementation of a State Universal Service Fund, Hearing testimony December 1, 1999 on behalf of MCI Worldcom

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13, 1998; Hearing testimony March 31, 1998; On behalf of AT&T Communications of the South Central States, Inc.

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Before the South Carolina Public Service Commission, Docket No. 97-374-C: Proceeding to Review BellSouth Telecommunications, Inc.'s Cost for Unbundled Network Elements and Interconnection Arrangements; Direct Filed November 17, 1997; Hearing Testimony December 16, 1997; On Behalf of AT&T Communications of the Southern States, Inc.

Before the Public Utilities Commission of the State of Colorado, Docket No. 97M-063T; On Behalf of AT&T Communications of the Mountain States, Inc. and MCI Telecommunications Corporations; In the Matter of the Administration of the Colorado High Cost Fund and the Development of a Cost Model; Direct Testimony filed in the name of William Lehr; Hearing Testimony 1 December, 1997

Before the North Carolina Utilities Commission, Docket No. P-55, SUB 1022; Hearing Testimony September 30, 1997; In RE: Notification of Intention to File a Section 271 Petition for In-Region InterLATA Authority with the FCC Pursuant to the Telecommunications Act of 1996; Filed September 3, 1997; On Behalf of MCI Telecommunications Corporation and AT&T Communications of the Southern States

Before the Alabama Public Service Commission, Docket No. 26029, Review of Cost Studies; Filed August 29, 1997; Hearing Testimony September 24, 1997; On Behalf of MCI Telecommunications Corporation and AT&T Communications of the South Central States

Before the Georgia Public Service Commission, Docket No. 7061-U, Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services; Direct filed April 30, 1997; Rebuttal and Supplemental filed August 29, 1997; Surrebuttal filed September 8, 1997; Hearing Testimony September 18, 1997; On Behalf of MCI Telecommunications Corporation and AT&T Communications of the South Central States

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Before the Arizona Corporation Commission, In The Matter of The Petition Of MCImetro Access Transmission Services, Inc. For Arbitration Of Interconnection Rates, Terms, And Conditions Pursuant to 47 U.S.C. § 252(b) Of The Telecommunications Act Of 1996, Docket No: U-3175-96-479; October 18, 1996; on behalf of MCImetro Access Transmission Services, Inc.

Before the Public Utility Commission of Texas, In The Matter of The Petition Of MCImetro Access Transmission Services, Inc. For Arbitration Of Interconnection Rates, Terms, And Conditions Pursuant to 47 U.S.C. § 252(b) Of The Telecommunications Act Of 1996, Docket Nos. 16300, 16355, October 14, 1996; on behalf of MCImetro Access Transmission Services, Inc.

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Before the Washington Utilities and Transportation Commission, In the Matter of the Petition of AT&T of the Northwest for Classification as a Competitive Telecommunications Company, Cause no. U-86-113; Cross Examination April 1986

Cost of Service Information for Implementation of the Regulatory Flexibility Act, Report to the Washington Utilities and Transportation Commission, July 1985

"On Reducing Errors in Air Pollution Epidemiology," with S. Atkinson and T.D. Crocker, draft report, Institute for Policy Research, University of Wyoming to U.S. Environmental Protection Agency for Grant CR808893-01, April 1982.

Consulting Clients:

- Texas Office of Public Utility Counsel
- Florida Competitive Carriers Association
- Avantel, Mexico
- AT&T
- MCI and MCI Worldcom
- Marcatel, Mexico
- New Mexico State Corporation Commission
- Electric Lightwave Inc.
- Washington Utilities and Transportation Commission
- U.S. MetroLink Company
- Colorado Public Utilities Commission
- Maryland People's Counsel

PUBLICATIONS:

"Multimedia Economics" Instructional CD ROM included in 5 CD MBA Boxed Set, Pro One Software, Las Cruces, New Mexico, 1998

"Issues, Indicators, and Baselines: The Benefits and Hazards of Using a Natural Resource Accounting System in the RCA Analytical Process", with Jason Shogren and Stanley R. Johnson, in *Evaluating Our Nation's Natural Resources*, edited by T. Robertson, B. English, R. Alexander, and P. Rosenberry, University of Tennessee Agricultural Experiment Station, 1996

"CEEPES: An Evolving System for Agroenvironmental Policy", with Aziz Bouzaher, Stanley Johnson, Andrew Manale and Jason Shogren, p 67-89 in *Integrating Economic and Ecological Indicators*, edited by J. Walter Milon and Jason Shogren, Praeger, Westport CT, 1995

"Metamodels and Nonpoint Pollution Policy in Agriculture", with Aziz Bouzaher, Alicia Carriquiry, Phil Gassman, P. G. Lakshminarayan, and Jason Shogren, *Water Resources Research* 29, p. 1579-1587, June 1993

"The Effects of Environmental Policy on Tradeoffs in Weed Control Management", with Aziz Bouzaher, David Archer, Alicia Carriquiry and Jason Shogren, *The Journal of Environmental Management*, 36, #1, 69 - 80, Sept. 1992

"The Regulation of Non-Point Source Pollution Under Imperfect Information", with Joseph Herriges, *The Journal of Environmental Economics and Management* 22, 134-146, 1992

"Equilibrium Diffusion of Technological Change Through Multiple Processes", *Technological Forecasting and Social Change* 39, Number 3, May 1991

"Natural Resource Accounting Systems and Environmental Policy Modeling", with Stanley R. Johnson, *The Journal of Soil and Water Conservation* 45 # 5, p 533-9, September/October 1990

"Network Differentiation and the Prospects for Competition in Local Telecommunications", in *Sixth Annual Current Issues Challenging the Regulatory Process*, The Center for Public Utilities, New Mexico State University, 1990

"Prospects for Competition in the Local Exchange Telecommunications Industry", in *Telecommunications Regulation in Washington State*, Washington Utilities and Transportation Commission, January 29, 1989

"Rate of Return Regulation of Multiproduct Firms," Doctoral Dissertation, University of Wyoming, Department of Economics, 1988

Annual Report to the Legislature on the Status of the Washington Telecommunications Industry, principal author for the Washington Utilities and Transportation Commission, January, 1987

"Normative Economics and the Acid Rain Problem" with L.S. Eubanks, in T.D. Crocker, ed., *Perspectives on the Economics of Acid Deposition*, 1983, Ann Arbor Michigan: Ann Arbor Science Press.

"Intertemporal and Intergenerational Pareto Efficiency: An Extended Theorem," Journal of Environmental Economics & Management 9, p 355-360, December 1982.

"Investment Criteria for Projects with Intergenerational Effects," Masters Thesis, Pennsylvania State University, Department of Economics, 1982.

EMPLOYMENT

Teaching:

Associate professor, Department of Economics and International Business, New Mexico State University; 1994 - 1999, Tenure Granted 1995, Assistant professor 1990 to 1994: Antitrust Policy and Monopoly Power; Graduate Microeconomic Theory; Mathematical Economics; Industrial Organization; Seminar in Regulatory Economics; Economics of Risk, Uncertainty and Information; Game Theory; Advanced Seminar in Industrial Organization; Econometrics; Managerial Economics; Introduction to Economics; Microeconomic Principles

Assistant professor, Department of Economics, West Virginia University, 1983-1984: Graduate Environmental Economics; Principles of Economics.

Lecturer, Department of Economics, University of Wyoming, 1982-1983: Money & Banking; Intermediate Microeconomics.

Teaching assistant, Department of Economics, University of Wyoming; Fall, 1980.

Teaching assistant, Department of Economics and Department of Mathematics, Pennsylvania State University, five quarters in academic years 1978-1979 and 1979-1980.

Public Policy:

Economic Consultant, 1988. Performed economic analysis concerning regulation of the telecommunications industry under contract to the Colorado Public Utilities Commission and the Washington Utilities and Transportation Commission.

Associate, RCG/Hagler, Bailly, Inc. 1987-1988. Assignments included litigation support in Bell Operating Company requests for lessened regulation and a study of the effect on property values of proximity to a major defense facility containing hazardous waste sites.

Telecommunications Regulatory Flexibility Manager, Washington Utilities and Transportation Commission, 1985-1987. Duties included conduct of investigations and preparation of recommendations, primarily with regard to the telecommunications industry; preparing evidence, assisting in cross examination and presenting expert testimony; and serving as a member of the Federal - State Joint Board Staff, FCC Docket 86-297, concerned with revising jurisdictional separations of telecommunications company costs and revenues.

Research:

Post-Doctoral Research Associate, Center for Agricultural and Rural Development, Department of Economics, Iowa State University, September 1988 to August 1990. Participate in policy-oriented economic research and serve as liaison to the Economic Research Service, USDA.

Research Associate, Department of Economics, University of Wyoming, spring 1981 through summer 1982. Theoretical modelling, data construction, and analysis on health effects of air pollution and application of economic methods to ecosystem modelling. Under the direction of Thomas Crocker.

Research assistant, Department of Economics, University of Wyoming, summer 1980. Data construction and analysis on health effects of air pollution. Under the direction of Ralph d'Arge.

Research assistant, Department of Economics, Pennsylvania State University, summer and fall 1979. Theoretical and empirical work with Asymmetric Quadratic Gorman Polar forms (flexible functional forms with explicit analytical solutions for the dual cost or expenditure function). Under the direction of Jonathon Dickinson.

Other Employment:

One year, Administrative Research Assistant, Aroostook County Action Program, Presque Isle, Maine.

Four years, U.S. Coast Guard, Electronics Technician.

AWARDS

Washington Utilities and Transportation Commission employee award for contributions to a positive work environment, Olympia, Washington, December 1986.

Award of merit, College of Commerce and Industry, University of Wyoming, 1981.

John S. Bugas fellow, University of Wyoming, academic year 1980-1981.

PERSONAL

Born July 16, 1950; Pulaski County, Arkansas

Married, one child

Second language: Spanish

EXHIBIT 3

**New Mexico Statutes Annotated
Section 33-14-1**

(“*New Mexico Statute*”)

ARTICLE 14

TELECOMMUNICATIONS SERVICES

Section

33-14-1. Contract to provide inmates with access to telecommunications services in a correctional facility or jail; conditions.

33-14-1. Contract to provide inmates with access to telecommunications services in a correctional facility or jail; conditions.

A. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall be negotiated and awarded to an entity that meets the correctional facility's or jail's technical and functional requirements for services, and that provides the lowest cost of service to inmates or any person who pays for inmate telecommunication services.

B. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall not include a commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail.

C. As used in this section:

(1) "correctional facility" means a state correctional facility or a privately operated correctional facility; and

(2) "jail" means a county jail, a municipal jail or a privately operated jail.

History: Laws 2001, ch. 33, § 1; 2001, ch. 115, § 1.

Effective dates. - Laws 2001, ch. 33, and Laws 2001, ch. 115, do not contain effective provisions, but pursuant to N.M. Const., art. IV, § 23, this section is effective June 15, 2001, 90 days after adjournment of the legislature.

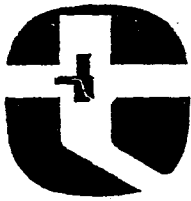
Duplicate laws. - Laws 2001, ch. 33, § 1 and Laws 2001, ch. 115, § 1 enact identical new sections of law. Both have been compiled as 33-14-1 NMSA 1978.

APPENDIX B

Request for Proposals

Tulsa County

May 5, 1997



Tulsa County

Purchasing Department

A Department of the Tulsa County Budget Board
Tulsa County Administration Building • 500 South Denver
Tulsa, Oklahoma 74103-3832 • (918) 596-5022
FAX (918) 596-4647

LINDA R. WEBBER
Purchasing Director

MAY 5, 1997

NOTICE TO BIDDERS

WE ARE REQUESTING A PROPOSAL FOR THE TULSA COUNTY SHERIFF'S DEPARTMENT FOR THE FOLLOWING:

INMATE TELEPHONE SERVICE

ATTACHED ARE THE SPECIFICATIONS:

BIDDER SHALL STATE IF HIS PROPOSED SERVICE MEET THESE SPECIFICATIONS, AND IF NOT HE SHALL LIST EACH VARIATION THEREFROM. SEALED PROPOSALS WILL BE RECEIVED BY THE COUNTY CLERK, ROOM 117, IN THE TULSA COUNTY ADMINISTRATION BUILDING, TULSA, OKLAHOMA UNTIL 9:00 A.M. ON THE 27TH DAY OF MAY, 1997. LATER THAT DAY, PROPOSALS WILL BE PUBLICLY OPENED AND READ ALOUD AT THE BOARD OF COUNTY COMMISSION MEETING.

"AFFIDAVIT FOR FILING WITH COMPETITIVE BID" FORM MUST HAVE ALL BLANK SPACES FILLED IN, BE SIGNED, NOTARIZED, AND RETURNED WITH BID OR BID WILL NOT BE ACCEPTED". OUT OF STATE PROPOSERS SHOULD CHANGE STATE OF OKLAHOMA AT THE TOP OF THE FORM TO INDICATE STATE WHERE PROPOSER IS LOCATED.

PLEASE SUBMIT PROPOSAL IN THE ENCLOSED SELF-ADDRESSED ORANGE ENVELOPE. THE BOARD OF COUNTY COMMISSIONERS RESERVE THE RIGHT TO REJECT ANY AND ALL PROPOSALS AND TO WAIVE INFORMALITIES OR MINOR IRREGULARITIES IN ANY PROPOSAL.

RESPECTFULLY,

LINDA R. WEBBER
PURCHASING AGENT

LRW/th

AFFIDAVIT FOR FILING WITH COMPETITIVE BID

STATE OF OKLAHOMA *Change*

COUNTY OF _____

} SS

_____, of lawful age, being first duly sworn, on oath says, that
PRINT OR TYPE NAME OF AGENT AUTHORIZED BY BIDDER

(s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any county official or employee as to quantity, quality or price in the prospective contract, or any other terms of said prospective contract; or in any discussions between bidders and any county official concerning exchange of money or other thing of value for special consideration in letting of a contract.

SIGNATURE OF AGENT AUTHORIZED BY BIDDER

Subscribed and sworn to before me this _____ day of _____, 19____.

NOTARY PUBLIC (OR CLERK OR JUDGE)

My Commission expires _____, 19____

NOTE:

Each competitive bid submitted to a county, school district or municipality must be accompanied by this properly completed Affidavit as required by 74 O.S. 1981 § 85.24. Bidder shall be disqualified if Affidavit:

1. Is *not* properly completed.
2. Does *not* accompany bid.

SPECIFICATIONS FOR INMATE TELEPHONE SERVICE

Project Scope and Requirements - Coinless Collect Phones

1. Commission Structures/Revenues.

Tulsa County requires monthly payments. Payment is due 30 days after the last day of the month. Failure to make payment within 60 days gives the County the right to cancel the contract. If any charge to Tulsa County please explain in detail.

Please provide information on the commission structure. Include the following within your response:

A. What is the percentage of commission you will pay Tulsa County?

1. Are you willing to pay a lump-sum advance commission? Additional commission payments will be due when and if the advance amount has been exceeded and will be payable on the first of each month following the actual date an which the advance amount is exceeded. In the event the commission advance amount is never exceeded, please state what Your policy would be. The gross revenue for Tulsa County in 1996 was \$1,066,999.30 and Tulsa County received \$392,000.00 commission. (Intra lata \$282,211.57 revenue; \$92,000.00 commission inter lata .
2. All rates must not exceed the allowable Oklahoma tariff day, holiday, evening and night rates for long distance calls. No surcharges can be added to these rates.
3. Failure to state proposed commission percentage will result in rejection of proposal.
4. At least 1 phone per cell with additional as needed
 - A. Please state what criteria used to determine need and who makes the decision.
5. Tulsa County requires a single primary vendor responsible for Inter lata and Intra lata calls and all revenue.

- B. The method used to calculate revenue to the County (e.g., gross revenue, adjusted gross revenue, net revenue). Explain in detail.**
- 1. State applicable deductions from Gross Revenue before calculating the County's revenue (i.e., uncollectible calls, total calls, access lines charges, clearing house charges, RBOC, LIDB, etc.).**
- C. Method of reporting the calculation of the County's commission payment.**
- 1. Provide samples of proposed reports.**
 - 2. Is there a charge for customized reports?**
 - 3. If yes, provide amounts.**
- D. Description of collection procedures.**
- 1. The County will reserve the right to: audit collection procedures and commission computations and to terminate the contract if repeated inaccuracies in either procedures or computations are revealed.**
 - 2. What type of reports are available to Tulsa County to audit commission payments?**
 - 3. Provide samples of reports.**
 - 4. Tulsa County requires detailed reports of placed, accepted, local and long distance calls.**
- E. Procedure for handling uncollectible revenue.**
- 1. State whether this expense reduces County commission and, if so, specify in what manner.**

F. Procedure for billing process.

- 1. Describe your billing process and who handles billing.**
- 2. Are there any handling fees charged to Tulsa County?**
- 3. Are there any deductions from revenues?**

2. Customer Service.

Please provide a description of the following customer service policies:

- A. Procedure used to handle customer complaints; include average length of time to resolve the complaint.
- B. Procedure used to reimburse the customer for incorrect billings and include average length of time to effect reimbursement.
- C. For the past 12 months, list the number of reports of coinless collect telephone outages for a comparably sized county or customer, (name the county or customer). Include the number of actual outages and time taken to effect repairs.

3. System Administration and Service

- A. The contractor shall provide on-site administration and on going training for the system at no additional cost and no impact on the commission paid to Tulsa County.
- B. On-Site Administration may be achieved by one centrally located point of administration for the entire system so long so as the administrator has remote on-line administration capability for the entire system.
- C. For reasons of security, Tulsa County reserves the right to approve all system administration personnel who have access to the system and to conduct background investigations of all assigned system administration contractor employees.
- D. Describe the level of service you are bidding for System Administration.
- E. The contractor shall be responsible for all maintenance, service, repairs and replacements of the total system including software, cabling and hardware.
- F. In the case of failure of or damage to any part of the system for any reason, the contractor will provide local service so that the system continues to operate to the Tulsa County's satisfaction. The contractor will designate a single technician with emergency backup capability so as primary point of contact.
- G. In case of significant system failure, including mult-station or multi-facility failure, service will be available within 4 hours from call, 24 hours a day, 7 days a week.
- H. In case of minor system problems, such so as single phone failure or routine service calls, service will be available within 24 hours from request for service. Inoperable equipment will be replace within 48 hours from call.
- I. The contractor shall have staff available 24 hours a day, 7 days a week to provide consultation and technical support by phone so as needed.

4. Training

- A. The contractor shall provide, at no cost to the Tulsa County, initial training for staff at each facility immediately after installation.
- B. Ongoing training for new staff will be provided at no cost to the Tulsa County so far as required for the life of the contract.
- C. Describe your training plan.

5. Technical Capabilities and Services Required.

The following describe the equipment specifications and services required by Tulsa County. Certain items require a response from the proposer.

The vendor has the responsibility for all aspects of the coinless collect telephones such as acquisition, installation, operation, service and maintenance. The County shall be responsible only for making the space for telephones available to the successful vendor. The County shall not be obliged to make any improvements to the space provided for the pay telephones.

- A. Please provide the name of the provider of the dial tone.
 - 1. Service dial tone must be supplied to vendors instrument neat and without danger to users or to the public.
 - 2. No PBX stations (DID) should be used.
 - 3. The successful bidder shall have the sole responsibility of all sub contractors, including commission rates, equipment and repairs.
- B. The charge to the inmate called number, or public called numbers, must not exceed and be identical to the Oklahoma Corporation Commission approved rates for local and intra-LATA and AT&T rates for inter-LATA calls with no surcharges.
- C. Line-powered equipment for inmate telephones is required.
- D. Indicate vendor capability to provide Tulsa County with monthly revenue reports detailing records of each call, both accepted and attempted calls, indicating originating telephone number, destination telephone number, date and time call initiated, date and time call terminated, duration of call and call charges, as well as

the name of the person making the call or the personal identification number (P.I.N.).

- E. Indicate vendor capability to provide Tulsa County a system which has the capability to provide the first two (2) local calls free to each inmate in the booking area. These calls must be reflected as free calls on the monthly reports.
- F. Call blocking/screening capability is required to insure that inmate calls cannot be completed to selected telephone numbers. Designated telephone numbers will be immediately blocked within one (1) hour of request. All 011, 683, 800, 900, and 976 area codes, along with all foreign area codes must be blocked. State the capacity of individual blocked numbers.
- G. Coinless pay telephones must be collect only, no third-party capabilities or credit card calls. The telephone numbers must not be published and must be restricted to receive no incoming calls, and cannot call payphones or other inmate phones.
- H. Call duration is required to insure that all inmates are afforded the opportunity to utilize the telephone system. Notice of this should be posted on the telephone in English and Spanish and the caller should receive notification (a warning tone) prior to being disconnected.
- I. System and individual telephone cut-off switches are desired in order to manual control the telephones.
- J. Tulsa County requires the monitoring and recording of all calls simultaneously. Each tape transport shall be designed for ease of access and repair of all components. The transport shall be designed to permit servicing of both transports together from the front of the cabinet simultaneously. Vendor will be required to furnish sixty (60) day supply of tapes.
 - 1. The call monitoring and recording system shall be state-of-the-art and designed to provide correctional facilities with inmate call control in recording. It will be used for controlling inmate calling, reducing fraud, and generation of valuable administrative reports.
 - 2. Monitoring system will equip facilities with computer and monitoring software.

3. Software will be used as method to maintain monitoring database and investigation of call records. It will be used with a logging recorder for verification and archiving of inmate conversations.
4. Call Watch monitoring system. This system converts analog sound to digital language. It compresses audio data into compact cartridges.
5. When an inmate dials the telephone, the conversation is immediately recorded on the logger recorder. At the same time, a time and ring scanner shall record and index the Station Message Detail Recording (SMDR) information. The SMDR information shall consist of area code and telephone number dialed, made, time call was initiated, length of call, the channel that was used for the call and the site location of the system.
6. This data shall be transmitted by modem to a data buffer which will store up to a minimum of 10,000 call records. The data buffer shall be designed to store the call detail record information and feed it into a personal computer (PC) for analysis and processing by monitoring software. The PC shall be equipped with software to track these phone calls over a period of time.
7. The system shall have the ability to select/not select monitoring by number dialed. It shall have the ability not to monitor listed attorneys' numbers called and to monitor all other calls made from a particular phone.
8. Local host processor call record detail may be downloaded from a dta center via telephone-line and modem interface. Call records are to be capable of downloading from the host processor hard disk drives to individually from inmate telephone controller modules. Call record detail may be viewed, formatted into reports and printed by the "on-site" administrative processor; however, they may not be updated, erased or any way changed by the administrative processor. Only the data center shall be capable of managing call records.
9. Call records shall be stored in non-volatile power independent memory that ensures data integrity under severe conditions. Call records may be retrieved by authorized methods through the local host processor or via modem by the data center.
10. The data center may also retrieve call records from individual phones via modem. Unauthorized entry attempts shall trigger automatic security warnings to the data center or local host processor so as required. Maximum protection shall be provided from data "hackers."
11. The host processor control and administrative functions shall be protected by hardware and software security systems. Access to the systems shall be controlled by a minimum three-level security system shall track system entries or unauthorized access. Remote access via modem shall be secured by several layers of password protection.

12. After a call has been completed, the inmate telephone controller module shall automatically send a copy of the call record to the controller CPU. The controller CPU shall then upload the call record to the hard disk drive for future downloading and billing.
13. The inmate telephone system shall be equipped with analog suppression/amplification hardware that allows correctional officers monitoring the calls without inmate or call part detection. There shall be no "click" or DB loss detected by the inmate when this feature is activated via handset, headset or amplification instrument (such so as speaker phone or other magnetic taping equipment).
14. Convert analogue sound to digital language, compressing audio data into compact cartridge, allowing hundreds of hours of audio to be stored on a single digital cassette.
 - Ability to record all channels per facility.
 - Dual drive to allow second drive to be utilized for playback while the primary drive continues recording.
 - When capacity is reached on primary drive, recording to be automatically transferred onto the second drive.
 - Instant playback and research.
 - Computerized PC-based control with mouse keyboard.
 - With CRT touch screen monitor.
 - Instant playback module.
 - Recorded information be be indexed with recorded time, data and channel identifiers.
 - Capable of search by channel name, search by time and date, search by next previous recording; fast forward/rewind in five second increments.
 - All search channels to be initiated at the PC or the CRT touch screen.
15. The inmate telephone set shall have a controller module board that may be located inside the inmate telephone or in a facility equipment room. The inmate telephone shall utilize high-speed microprocessing technology to facilitate rapid manipulation of large amounts of information for precise and flexible "on-board" control.
16. Each inmate telephone shall contain a microprocessor and memory array that is capable of operating in an absolute, automatic, "stand-alone" mode in the event of a catastrophic local host processor failure.
17. The local host processor in each facility will be a network-type system containing a local host processor serving up to 500 inmate telephones and up to 500 trunk/lines. Each inmate telephone shall act as a remote intelligent terminal that communicates inmate dialing requests to the local host processor. During normal operation, the local host processor will poll each inmate telephone for inmate dialing request data. This data is then correlated to the lost central database to determine if the inmate's dialing request should be granted. The host will then send calling instructions along with the

inmate's personal voice recording back to the telephone where it will either place the call or respond with "deny" message to the inmate.

18. The host shall be equipped with redundant processors that are capable of operating the system independently in the event one falls, uninterruptible power utility failure and line anomalies.
19. The local host processor shall store no less than 650,000 call records on its standard configuration. It shall be expandable to no less than 2,275,000 call records.
20. Call records, as well as a variety of other data shall be remotely downloaded or uploaded via modem. The system shall use proper protocol algorithms and check-sums for security. The system shall download call record information generated by the inmate telephones from a single source point at the local host processor.
21. In case of catastrophic CPU failure in the local host processor, each inmate telephone will continue to operate in the stand-alone mode. Since call detail and generic block tables are resident in each inmate telephone, telephone shall continue to operate with no loss of functionality to the user.
22. Each CPU and at least two of the inmate telephones at each installation site shall be programmed to automatically call two pre-assigned numbers to report failures. In the event of a main CPU failure, the alternate CPU will report and in the event of a main and alternate CPU failure, the preprogrammed telephone sets will report.
23. One central processor unit (CPU) shall be on-line with all inmate telephones (the controller processor) at all times while the other CPU shall be available for administrative and database updating (the administrative processor). Reports shall transfer to any MS-DOS/Windows-compatible software program for display or manipulation. Standard disk storage configuration for both the administrative and controller processors shall be no less than 500 MB hard drives. Each processor shall be equipped with on-line 1.44 MB floppy disk drives. Floppy drives shall allow system administrators to update system software and archive call record and database files. The storage capabilities shall be increased as system requirements dictate.
24. The local host processor shall be equipped with dual (2) modems, 2400-baud or greater, accessible by the controller and the administrative processors. A monitor with keyboard shall be provided with each host.
25. Each local host processor will be equipped with a high-speed, letter-quality printer that will be used for printing administrative and investigative reports.
26. Each local processor shall be equipped with one hour UPS.

27. The system shall be designed to serve up to 500 inmate telephones and 500 trunk/lines, depending on usage. The maximum inmate wait for dial tone shall not exceed four seconds.
 28. All electronic components shall be isolated, grounded and surge protected to provide protection from power surges and fluctuations.
 29. The system must be capable of supporting thin net, twisted pair or token ring network cabling configurations.
 30. The system will be capable of recording up to 640 channel hours of the most recent recordings on-line for instant access with access independent of the removable media. The maximum on-line storage capacity available shall be no less than the maximum capacity of the removal media.
 31. The system must provide a PC workstation interface to access one or many digital recording modules capable of recording thousands of channels simultaneously.
 32. The system must provide buffering of all audio, as it is recorded, in RAM and then write audio to the IPM, and then the drive. If the IPM fails, it will write directly from RAM to each drive to protect against audio loss.
 33. When recording in VOX, the system must keep a record of the time and date for silent periods.
- K. Indicate vendor capability to provide personal identification number (P.I.N.) to the inmates with a minimum of ten (10) digits per inmate. Indicate vendor capability to provide on-site computer terminal to facilitate installation and removal of individual personal identification number (P.I.N.). Is there a charge for this?
- L. Party called will be informed that this is a collect call originating from a detention facility. If a local call is made, called party will be informed of the rate being charged to them. This is desired to insure that the public is aware of the collect calling procedures. The system must be bi-lingual (English and Spanish). Voice recording that advises the inmate that the call will be recorded and can be monitored and that if called party does not accept charges to hang up or if the call is accepted they must press key on the telephone.
- M. Equipment should be current production models of proven reliability, compliant with the most current Federal Communication Commission rules, and shall conform to the manufacturers published specifications.

- N. Equipment must have a ruggedized, tamper-proof and vandal-resistant housing and vandal-resistant handset and cords, samples must be provided prior to vendor selection process. Signs must be posed on each phone that inform the inmate that the conversation is being recorded.
- O. Handsets must be hearing-aid compatible or have some type of volume control.
- P. Each telephone must display operating instructions and the default long distance carrier in English and Spanish. This telephone shall be line powered (requiring no A.C. power or backup batteries.)
- Q. Vendor must include brochures or information for the equipment that details manufacturer's specifications.
- R. While the County reserves the right to approve the long distance carrier, consideration will be given to the vendor's long distance and/or 918 carrier.
1. Vendor must be responsible for providing O+ and intra-LATA and inter-LATA service. If partnership list each vendor and what they will be supplying.
 2. Please state if vendor is in partnership with other vendors such as long distance carriers. If so, Tulsa County must approve carrier.
 3. State what the current charges would be for a long distance call and what would be Tulsa County's commission rate.
 4. Must supply TTY and 4 locations to access. If fee to Tulsa County please state what the fee is.
- S. After implementation of the contract, the vendor must make available to the County, without charge, any enhancements or any other terms, conditions, or circumstances which favor the County and which are made generally available at no charge to the vendor's other customers.

- T. State what the current charge would be for a local collect call utilizing the inmate coinless collect telephone.
1. State Commission Rate. _____
- U. Indicate vendor capabilities to provide an on-site computer terminal(s) and printer(s) for report purposes. If charge to Tulsa County please state what the charge is.
- V. Capability to limit each inmate call to a specific time interval, e.g., 17 minutes per call.
- W. Indicate vendor capabilities to provide International calls and what the current charge would be for such a call and what Tulsa County's commission will be.
- X. Will vendor provide a system administrator to be onsite during normal business hours to administer and maintain the system? Will there be additional charges to the County for this level of support?
1. If the vendor does not provide an onsite administrator, please describe how the support will be provided.
- Y. Indicate vendor capabilities to provide three-way call blocking. System must recognize precise TT or Rotary "1" digit.
- Z. Please describe how the inmate phone is connected. Tulsa County preference is one line to one inmate phone.
1. Is a concentrator used?

2. If yes, is vendor able to monitor and add additional lines as needed to prevent any busy signals? If additional lines are added is there a cost to Tulsa County? If so, what is the cost.
3. If yes, and more than one concentrator is required, are they linked together?
4. If yes, please provide at what ratio of inmates to phone lines.

4. Installation and Maintenance.

The County reserves the right to approve all equipment prior to installation. The County also reserves the right to check each installation made by the vendor to ensure the work conforms to the County's standards for wiring and placement on the equipment. The County will require the vendor to alter any installations found not conforming to standards. The County must approve each proposed new telephone service. Only after County approval may the vendor install equipment at a new location.

- A. It is solely the vendor's responsibility to provide installation and maintenance which includes all wiring at the new detention facility as well as any additional wiring required to facilitate the system in the old County jail, as per Exhibit "A".
- B. Detail equipment installation charges, if any.
- C. Describe the maintenance and quality assurance programs for telephones to be installed.
- D. Detail the method of determining service interruptions and service call priorities. List response time for each priority and the level of expertise devoted to each priority.
- E. The vendor must be able to perform a live demonstration of the telephone equipment.

- F. How many telephone technicians are located in Tulsa County and capable of installation and maintenance of your particular telephone system?
- G. Where is the parts warehouse located? Explain procedures for provisions of piece parts. What is the dollar inventory at this location?
- H. A 30 day installation period is required by the vendor upon receipt of such order by the County.
- I. Explain plans for transition from this proposal to include the new jail.

Telephones need for new jail:

1 TTY in booking area
4 booking area
20 pads with 8 phones per pad expandable
to 30 pads with 8 phones per pad.

INSTALLATION AND CUT-OVER

- 1 The contractor will provide inmate phone sets, the remote Administration station and the automated inmate call control system, install the sets, remote system and the system and insure that they are working properly. This installation is to be completed within thirty (30) days after award of the contract.
- 2 A bidder shall submit a complete and detailed schedule of the time-frame required for installation, utility coordination, training, cut over and testing. The system must be installed in a manner and under a time-frame designed to minimize disruption of the normal functioning of the Tulsa County.
- 3 If the schedule cannot be met within the 30 days stated above, contractor must propose an installation schedule of events. Failure to state installation time in the bid will obligate the contractor to complete installation so as required in the bid. Extended installation time may be considered when in the best interest of the County.
- 4 Any delay in the implementation of the contractor's schedule that is caused by the County will increase the contractor's time allowance to complete installation but the contractor must submit a complete and detailed schedule of additional time required.
- 5 The risk of loss and or damage will be assumed by the contractor during shipment, unloading and installation.

5. Miscellaneous Information.

6. Contractor will be responsible for contacting current contractors to coordinate the cut over without loss of services.

A. Full name of the vendor, principal office address, telephone number and contact person and title.

B. Length of time the vendor has been in business and the length of time has provided correctional (inmate) coinless service.

C. A description of the vendor, including:

1. The five (5) largest current customers and the number of current coinless collect telephones in operation per customer. Also provide contact names for these customers.

2. Please provide vendor's complete client list where the inmate telephone system proposed in this RFP is currently being used.

D. Location of business office closest to Tulsa and the number of persons employed in Tulsa County.

E. Financial History:

1. Proposer shall submit a Balance Sheet and Income Statement prepared in accordance with good accounting practice (preferable by a Certified Public Accountant), reflecting proposer's most recent annual operating period, together with a copy of proposer's last annual report, if available.

2. Each proposer must furnish a brief history of his corporate or business entity, clearly setting forth the current ownership. An affiliate or subsidiary must clearly set forth the name of any superior entity.

F. Bidder shall provide Tulsa County with Certificate of Insurance, both Workman's Compensation Insurance and General Liability Insurance coverage for work at the various Tulsa county facilities with limits of not less than \$100,000 / \$300,000 / \$100,000 with excess umbrella liability of \$1,000,000. Successful vendor must submit copies of insurance certificates to the County before any work can be started.

G. Evaluation Criteria:

The award of the contract shall be made to the vendor whose proposal receives the highest percentage under the following evaluation criteria:

- 25% VENDOR'S QUALIFICATION/EXPERIENCE
- 30% VENDOR'S TOTAL PROPOSED REVENUE
- 15% VENDOR'S MAINTENANCE/SUPPORT
- 30% THE PROPOSED INMATE TELEPHONE SERVICES MEETING TULSA COUNTY'S NEEDS AND REQUIREMENTS AS WELL AS THE IMPACT ON THE TULSA COUNTY SHERIFF'S OFFICE DURING TRANSITION.

GUIDELINES FOR PROPOSAL EVALUATION:

Proposals will be evaluated using a comprehensive set of criteria. A list of these criteria presented below:

1. Highest net revenue to Tulsa County.
2. Fast call placement.
3. Options available.
4. Maintenance and repair.
5. Class and quality of service provided.
6. Durability of equipment proposed.
7. Location and availability of service technicians.
8. Adequacy and completeness of responses.

H. Contract Terms:

- 1. Propose the response part of contract to assure that all representations are made in good faith and vendor must agree that the representations made in the Proposal response will be carried out. Accordingly, the contract should contain a clause agreeing that the Proposal response will be a part of the contractual agreement.**
- 2. The length of the aforementioned contract shall be no longer than one (1) year based upon the July 1 through June 30th fiscal year calendar. An exception to this may be made the first year. Refer to Exhibit "A" for first fiscal year terms. And may be renewed up to four (4) times by mutual agreement.**
- 3. THE CONTRACT MAY BE TERMINATED BY EITHER PARTY UPON THIRTY (30) DAYS WRITTEN NOTICE PRIOR TO CANCELLATION.**

I. Bonds.

Proposal bid bond is required in the amount of Twenty Thousand Dollars (\$20,000.00) guaranteeing that, should they be the successful proposer, they will enter into a contract in accordance with the terms and conditions specified therein.

- 1. When proposals requiring security are opened, funds will be deposited and a record will be kept by the Board of County Commissioners. All deposits will be returned to proposers upon compliance of successful proposer.**

J. Please provide recap of any charges that Tulsa County will be responsible for, one-time, monthly or any deductions from revenues.

K. The County is currently served by a collect/non-cash telephone system. The successful vendor shall be required to coordinate the removal of existing system without any disconnected service to inmates.

APPENDIX C

New Mexico Department of Corrections

Regulation CD-150300

(1992, rev. 1999)

NUMBER: CD-150300
DATE ISSUED: 09/30/92
EFFECTIVE DATE: 09/30/92
REVISED DATE: 05/14/99

SUBJECT: Access to
Telephones; Telephone
Monitoring

I. AUTHORITY:

- A. NMSA 1978, Sections 30-12-1, 33-2-10, 33-2-15, and 33-2-49, as amended.
- B. Policy CD-010100.

II. REFERENCE:

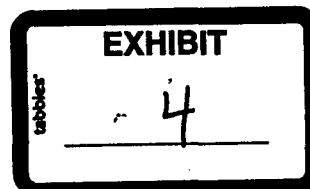
- A. ACA Standard 2-CO-5D-01, Manual of Standards for the Administration of Correctional Agencies, 1993.
- B. ACA Standard 3-4439, Manual of Standards for Adult Correctional Institutions, 1990.

III. PURPOSE:

To provide for the safety and security of correctional facilities by monitoring and recording all unprivileged telephone calls by inmates.

IV. APPLICABILITY:

All inmates at the Penitentiary of New Mexico (North, South, MRU and Main), Central New Mexico Correctional Facility, Central Minimum-Restrict Unit, Western New Mexico Correctional Facility, Reception and Diagnostic Center, and Southern New Mexico Correctional Facility and staff involved in the telephone monitoring system.



DATE ISSUED: 09/30/92

NUMBER: CD-150300

EFFECTIVE DATE: 09/30/92

PAGE: Two

REVISED DATE: 05/14/99

V. DEFINITIONS:

- A. Privileged Telephone Calls: Telephone calls by inmates with attorneys, recognized agencies that provide legal assistance, the courts, elected and appointed governmental officials, the news media, grand juries, law-enforcement agents or agencies, the Secretary of Corrections, Corrections Commissioners, and the Parole Board.
- B. Unprivileged Telephone Calls: Telephone calls by inmates with family, friends, or any other person or organization not specifically defined as privileged.

VI. POLICY:

Inmates will have access to telephones. Telephones in living areas are available for inmates to make outgoing collect calls of an unprivileged nature. Random monitoring and tape recording of unprivileged inmate telephone calls will be used to screen for possible threats to the security of the institution by identifying inmate phone calls which involve planning or organizing escapes, criminal or prohibited activity, or any other information which leads correctional officials to believe that the security of the institution or the safety of staff, inmates, or the public may be compromised.

Provisions will be made for inmates to have access to telephones which are not capable of being monitored for the purpose of making privileged telephone calls.

5/7/99
Date


Robert J. Perry, Cabinet Secretary
New Mexico Corrections Department

NUMBER: CD-150301
DATE ISSUED: 09/30/92
EFFECTIVE DATE: 09/30/92
REVISED DATE: 05/14/99

SUBJECT: Access to
Telephones; Telephone
Monitoring

I. AUTHORITY:

Policy CD-150300.

II. PROCEDURES:

A. Provision of Telephone Services

1. Institutions will provide access to telephones for both privileged and unprivileged telephone calls. Phones used for unprivileged calls are subject to monitoring and taping by institutional staff.
2. Privileged phone calls will be requested in writing using the Privileged Phone Call Request Form (CD-150301.1).
3. Privileged phone calls will be placed collect from unmonitored telephones.
4. In extraordinary circumstances, an inmate may request permission from the Shift Supervisor, Associate Warden, Deputy Warden or Warden to use an institutional telephone (other than the monitored telephones designated for use by inmates) to make an unprivileged telephone call. If the request is granted, staff shall dial the number, ensure the proper party consents to receive the call and may remain in the room to monitor the conversation. The inmate shall be required to reimburse the institution for the cost of any telephone toll charge for the call. The staff member placing the call is responsible for arranging with the operator before the call is placed to obtain the cost of the call. The inmate must complete a debit memorandum for payment of these calls.

DATE ISSUED: 09/30/92

NUMBER: CD-150301

EFFECTIVE DATE: 09/30/92

PAGE: Two

REVISED DATE: 05/14/99

B. Notification to Inmates

1. Notification will be provided to inmates upon receipt at RDC and during orientation at all institutions that unprivileged phone calls will be randomly monitored and taped. The notice will also inform inmates that phones which are not capable of being monitored are available for privileged phone calls and the steps necessary to request such phone calls.
2. A notice that all calls from phones that are subject to monitoring and recording at any time without further notice will be conspicuously posted in Spanish and English so as to be visible by persons using any telephone capable of being monitored.
3. The Warden of each institution with a telephone monitoring system will promulgate a policy to implement the notification provisions of this section which includes specific instructions to inmates as to how they may access telephones for privileged phone calls.

C. Inmate Responsibilities

1. Any inmate found to have damaged or defaced telephone equipment may be subject to disciplinary action and/or criminal charges if property damage is substantial.
2. Any inmate who uses telephone equipment for the purpose of committing any unlawful act or violation of departmental or institutional policies will be subject to disciplinary and/or criminal action.
3. Inmates who request and are granted an unprivileged telephone call through an appropriate staff member will be charged \$.20 a minute, or comparable rate based on the charge quoted by the telephone company. Inmates will complete an inmate debit memorandum for payment of these telephone calls.

DATE ISSUED: 09/30/92
EFFECTIVE DATE: 09/30/92
REVISED DATE: 05/14/99

NUMBER: CD-150301

PAGE: Three

D. Institution Responsibilities

1. Every effort should be made to allow access as soon as practicable, especially in the event of an emergency or exigency. However, the institution will provide access to unmonitored telephones for privileged phone calls within 2 working days of receipt of request.
2. Phone calls will be placed by an institutional staff member who will verify the identity of the receiving party. The phone call between the inmate and the privileged communicant will take place in a location which assures the confidentiality of the conversation. This provision does not preclude visual observation during a telephone call.
3. Staff authorized to place privileged telephone calls will document the date and time any call takes place using the Privileged Phone Call Request Form. The Warden of each institution will designate an individual or office responsible for the retention of all documentation relating to privileged phone calls.

5/7/99
Date

Robert J. Perry
Robert J. Perry, Cabinet Secretary
New Mexico Corrections Department

APPENDIX D

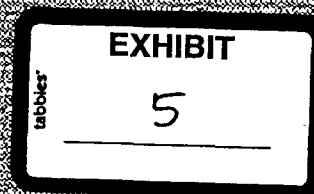
Reports

New Mexico Legislative Finance Committee

1992, 1993, 1994-1995

LEGISLATIVE FINANCE COMMITTEE

1992



**BUDGET ANALYSIS
OF STATE AGENCIES**

Volume I

TABLE 1

CORRECTIONS DEPT

770

BUDGET SUMMARY
(Dollars in Thousands)

FY81 - 1992-93

	FY79 1990-91 ACTUAL	FY80 1991-92 BUDGETED	AGENCY REQUEST	LFC RECOMMEN- DATION	PERCENT INCR (DECR)
REVENUES					
General Fund	89,868.5	93,445.1	103,186.2	94,230.5	0.8
Other State Funds	12,422.3	11,263.8	11,329.3	11,521.6	2.2
Internal Service/Transfer	177.7	341.0	403.5	403.5	18.3
Federal Funds	713.2	408.9	287.0	325.9	-20.3
Cash Balance Budgeted	2,116.2	1,800.8	564.3	2,025.8	12.4
TOTAL REVENUES	105,297.9	107,259.6	115,770.3	108,507.3	1.1
EXPENDITURES					
Personal Services	42,474.6	44,544.7	47,412.2	45,688.2	
Employee Benefits	18,924.4	19,020.3	20,054.9	19,419.2	
Travel	761.2	805.2	917.1	822.0	
Maintenance/Repairs	2,489.5	2,554.5	2,737.6	2,429.0	
Supplies/Materials	8,006.3	7,901.4	8,902.5	8,001.1	
Contractual Services	11,414.9	11,845.9	13,251.8	12,345.4	
Operating Costs	6,541.9	7,854.4	8,529.5	7,934.6	
Other Costs	10,211.9	11,619.6	12,336.5	10,987.8	
Capital Outlay	1,457.6	1,071.7	1,578.5	845.5	
Out-of-State Travel	16.7	41.9	49.7	34.5	
TOTAL EXPENDITURES	102,299.0	107,259.6	115,770.3	108,507.3	1.1
REVERSIONS AND BALANCES					
REVERSIONS	416.1	0.0	0.0	0.0	
ENDING CASH	2,582.8	0.0	0.0	0.0	
FTE POSITIONS					
Permanent	1,935.00	1,988.00	2,064.00	1,961.50	
Term	45.00	26.00	47.00	47.00	
TOTAL FTE POSITIONS	1,980.00	2,014.00	2,111.00	2,008.50	

REVENUE SOURCES

The Corrections Department receives the majority of its operating revenue from the general fund. It also receives state land and interest income administered by the State Land Office and the State Investment Council.

Other state funds are derived through canteen sales, probation and parole fees and sales by Corrections Industries. Federal funds are derived through the Job Training Partnership Act. Internal service funds/interagency transfers from the New Mexico State Highway and Transportation Department support the use of inmates for highway work crews.

RECOMMENDATIONS

The Corrections Department requested a total of \$115,770.3, a 7.9 percent increase over the current operating levels. This request included a base budget of \$112,686.4 (4.8 percent increase) and \$3,083.9 in program change. The department requested \$103,186.2 from the general fund (10.4 percent increase), with \$100,132.1 for base expenditures (7.2 percent) and \$3,054.1 for program change.

The total recommendation of \$108,507.3 is a 1.1 percent increase over the FY80 operating budget. This includes \$11,521.6 in other state funds, \$403.5 in internal service funds/interagency transfers, \$325.9 from federal revenue sources and \$2,025.8 in cash balances budgeted. The general fund recommendation of \$94,230.5 is a .8 percent increase, with \$93,696.9 in base and \$533.6 in program change.

Although the Corrections Department requested \$564.3 in cash balances budgeted, the committee recommends that \$2,025.8 in cash balances be budgeted in FY81. The difference between the recommendation and the request (\$1,461.5) is reconciled through the availability of telephone monitoring program commissions (\$550.0), unexpended cash balances from Community Corrections programs (\$67.8) and a reduced need for the departmental restriction of cash balances for potential legal costs. The latter reduction results in the increased availability of \$843.7, as the necessity for holding these balances is adjusted from \$1,443.7 to \$600.0.

Cash balances are recommended for budgeting in four programs: the Probation and Parole Division's field services bureau (\$404.8), the Community Corrections component of that same division (\$501.2), the Penitentiary of New Mexico (\$1,049.8) and Adult Health Services (\$70.0).

Significant base budget recommendations include:

1. Funding of the private contract for the operation of the women's facility in Grants;
2. Funding for the joint powers agreement with Santa Fe Community College for educational and library services;



LEGISLATIVE FINANCE COMMITTEE

1993

**BUDGET ANALYSIS
OF STATE AGENCIES**

Volume 1



BUDGET SUMMARY
(Dollars in Thousands)

FY82 - 1993-94

	FY80 1991-92 ACTUAL	FY81 1992-93 BUDGETED	AGENCY REQUEST	LFC RECOMMEN- DATION	PERCENT INCR (DECR)
REVENUES					
General Fund	92,292.5	93,776.4	109,870.4	96,537.6	2.9
Other State Funds	11,545.0	12,380.8	12,246.9	12,304.8	-0.6
Internal Service/Transfer	302.8	403.5	350.3	350.3	-13.1
Federal Funds	274.2	174.0	0.0	30.0	-82.7
Cash Balance Budgeted	2,456.2	1,475.7	203.8	1,247.7	-15.4
TOTAL REVENUES	106,870.7	108,210.4	122,671.4	110,470.4	2.0
EXPENDITURES					
Personal Services	44,272.6	45,640.5	49,518.5	46,087.2	
Employee Benefits	18,957.6	19,092.7	21,300.6	19,798.6	
Travel	745.9	783.6	776.8	725.5	
Maintenance/Repairs	2,647.8	2,260.6	2,885.2	2,266.6	
Supplies/Materials	8,164.8	7,810.2	9,556.5	8,309.9	
Contractual Services	12,023.5	12,451.0	14,967.3	12,934.8	
Operating Costs	7,374.3	7,881.1	8,193.3	7,709.4	
Other Costs	9,348.5	11,744.0	13,123.8	12,187.1	
Capital Outlay	1,348.7	514.8	2,283.9	416.0	
Out-of-State Travel	36.8	31.9	65.5	35.3	
TOTAL EXPENDITURES	104,920.5	108,210.4	122,671.4	110,470.4	2.0
REVERSIONS AND BALANCES					
Reversions	843.2	0.0	0.0	0.0	
Ending Cash	1,106.0	0.0	0.0	0.0	
FTE POSITIONS					
Permanent	1,988.00	1,967.00	2,081.50	1,994.00	
Term	26.00	27.00	18.00	18.00	
TOTAL FTE POSITIONS	2,014.00	1,994.00	2,099.50	2,012.00	

suggested budgeting \$1,030.3 in other state funds and \$152.4 in cash balance for this bureau.

The request for the community corrections activity was \$2,562.7, a .4 percent reduction from the FY81 operating budget. This included a general fund request of \$2,511.3 (an eight percent increase) and the suggestion that cash balance be budgeted at \$51.4 (a reduction of \$199.7 from the current level).

The total recommendation of \$12,479.4 is a 3.5 percent increase, with \$12,196.5 in base (1.2 percent increase) and \$282.9 in program change.

The general fund recommendation of \$11,199.0 (3.5 percent increase) includes \$10,916.1 for base expenditures (one percent increase) and \$282.9 to support an additional probation and parole field services unit (eight FTE) in Bernalillo County. The total recommendation includes \$9,903.9 for the field services program and \$2,575.5 for the community corrections activity.

The difference between the request (\$1,030.3) and the recommendation (\$1,075.0) in other state funds stems from anticipation of higher probation and parole fee collections. The department request and the LFC recommendation are identical with respect to reimbursement from an inmate telephone monitoring system, expected to be \$550.0.

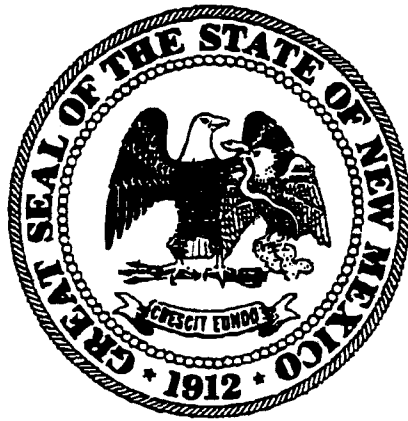
BUDGET

Expenditures

The recommendation in the personal services category includes funding of all vacant positions at the entry level of the corresponding range and funding sufficient to provide salary increases to all of the division's classified employees. Additionally, a turnover ratio of 4.5 percent is applied to the division's field services component. The employee benefits category recommendation is adjusted for the recommendations made in the personal services category. Upward adjustments in the category arise from higher group insurance costs.

The in-state travel, maintenance and repairs, and supplies and materials categories are recommended at or near current operating levels. The contractual services category recommendation of \$1.0 will cover pre-employment drug testing. The operating costs category is recommended for an increase to expand electronic monitoring services to the division's Farmington and Santa Fe offices.

The recommendation in the other costs category includes funding the community corrections activity at a level equivalent to the current operating level (\$2,182.9) and an increase in funding to support detention costs and urinalysis. The capital outlay recommendation includes funding for the division's copier leases and for replacement of typewriter and facsimile machines. The out-of-state travel category is recommended at a slight increase over the current operating level.



LEGISLATIVE FINANCE COMMITTEE

**1994-1995
BUDGET ANALYSES
VOLUME II**

TABLE 1

CORRECTIONS DEPARTMENT

770

BUDGET SUMMARY
(Dollars in Thousands)

	FY83 - 1994-95				
	FY81 1992-93 ACTUAL	FY82 1993-94 BUDGETED	AGENCY REQUEST	LFC RECOMMEN- DATION	PERCENT INCR (DECR)
REVENUE					
General Fund	93,776.4	96,184.3	123,507.5	102,875.1	6.9
Other State Funds	12,664.4	12,320.8	12,513.7	12,602.7	2.2
Internal Srvc/Transfer	0.0	350.9	664.4	664.4	89.3
Federal Funds	178.5	30.0	30.0	30.0	0.0
Cash Balance	1,476.0	1,246.1	1,063.2	1,063.2	-14.6
TOTAL REVENUE	108,095.3	110,132.1	137,778.8	117,235.4	6.4
EXPENDITURES					
Personal Services	45,423.0	46,087.9	58,053.2	51,600.1	
Employee Benefits	19,025.0	19,793.9	23,860.6	21,435.8	
Travel	766.4	711.2	1,093.3	856.1	
Maintenance/Repairs	1,958.7	2,232.2	2,978.7	2,306.8	
Supplies/Materials	8,292.2	8,178.5	9,868.5	8,860.2	
Contractual Services	12,715.1	12,888.0	11,574.6	10,617.8	
Operating Costs	7,650.5	7,663.4	8,601.0	7,984.3	
Other Costs	10,841.3	12,148.3	18,879.5	13,031.6	
Capital Outlay	700.4	397.3	2,813.9	508.8	
Out-of-State Travel	19.9	31.4	55.5	33.9	
TOTAL EXPENDITURES	107,392.5	110,132.1	137,778.8	117,235.4	6.4
REVERSIONS AND BALANCES					
FTE POSITIONS					
Permanent	1,967.00	1,978.00	2,326.50	2,112.00	
Term	27.00	18.00	69.00	33.00	
Temporary	0.00	0.00	3.00	3.00	
TOTAL FTE POSITIONS	1,994.00	1,996.00	2,398.50	2,148.00	

Corrections programs within the Field Services Bureau thereby creating a distinction between those programs connected with the department's personnel and those under contract. An additional eight FTE previously authorized for the Community Corrections activity are also requested to be placed within the Field Services Bureau. The result of these two requests will be substantial increases in the personal services and employee benefits categories within the Field Services Bureau and a reduction in the request from the Community Corrections activity.

The request for the Field Services Bureau was \$15,098.3, a 51 percent increase over the current operating level. Included in this request are base budget expenditures of \$13,053.9 (30.5 percent increase) and \$2,044.4 in program change. Although the FTE request associated with the program change calls for 70.5 additional FTE, the funding level is commensurate with 45.5 positions; the funding for the 25 positions is in the base budget. The program change request relative to these 25 positions alludes to altering their status from term to permanent. The entire program change request came in the form of a general fund request. The department suggested budgeting \$1,105.9 in other state funds and \$191.3 in cash balance for this bureau.

The request for the Community Corrections activity was \$1,984.7, a 22.2 percent reduction from the FY82 operating budget. This included a general fund request of \$1,433.2 (a 42.7 percent reduction) and the suggestion that cash balance be budgeted at \$551.5. The request included a base budget request of \$984.7 and program change for Community Corrections program expansion of \$1,000.0.

The total recommendation of \$13,768.3 for the division is a 9.7 percent increase, with \$13,040.6 in base (3.9 percent increase) and \$727.7 in program change. The general fund recommendation of \$11,895.5 (5.7 percent increase) includes \$11,167.8 for base expenditures (.7 percent reduction), \$327.7 to support 10 additional probation and parole officers throughout the state and \$400.0 for the expansion of Community Corrections programs. The total recommendation includes \$12,383.6 for the Field Services Bureau and \$1,384.7 for the Community Corrections activity.

The difference between the request (\$1,105.9) and the recommendation (\$1,130.0) for other state funds stems from the anticipation of higher probation and parole fee collections. The request and the recommendation are identical with respect to the other element comprising other state funds -- reimbursement from an inmate telephone monitoring system is expected at \$589.1.

In accordance with the agency's request to transfer funding from the Community Corrections activity to the Field Services Bureau to support 33 FTE associated with Community Corrections programs historically operated by the Corrections Department in Albuquerque, Farmington, Las Cruces and Santa Fe, the committee recommends that such a transition take place. It appears as though these programs involve a combination of field service and community corrections activities. Furthermore, management efficiencies can be effectuated through this request and it is posited that turnover will be less of a problem through the creation of 25 of these positions as permanent. It is suggested that the department develop procedures and systems to closely monitor these department run programs to ensure that clients being served are, at the least, maintained if not increased. The department operated programs currently serve 254 clients which equates to approximately two-thirds of all the clients served through Community Corrections programs.

APPENDIX E

Rebuttal Testimony of

Michael R. Horcasitis

Qwest Corporation

August 31, 2001

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO THE RATES AND CHARGES OF) UTILITY CASE NO. 3317
INSTITUTIONAL OPERATOR SERVICE)
PROVIDERS)

SEP - 4 2001

REBUTTAL TESTIMONY OF

Michael R. Horcasitas

QWEST CORPORATION

August 31, 2001

MONTGOMERY & ANDREWS, P.A.
Thomas W. Olson, Esq.
Carolyn A. Wolf, Esq.
P.O. Box 2307
Santa Fe, New Mexico 87504-2307
(505)982-3873

1
2 **I. IDENTIFICATION OF WITNESS**
3

4 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**
5 **POSITION.**

6 **A.** My name is Michael R. Horcasitas. My business address is 400 Tijeras.
7 NW, Suite 510, Albuquerque, New Mexico. I am a Manager in Qwest
8 Policy and Law.
9

10 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS**
11 **PROCEEDING?**

12 **A.** Yes. I previously filed testimony in this case on August 10, 2001.
13

14 **II. PURPOSE OF TESTIMONY**
15

16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

17 **A.** The purpose of my testimony is to respond to the direct testimony filed on August
18 10, 2001 by Ms. Alicia Bernal of Commission Staff. Specifically, I will address
19 Staff's testimony regarding the recovery of commissions through rates charged by
20 an IOSP, Staff's recommendation regarding the use of pre-paid accounts for
21 inmates of institutions, and Staff's recommendation for a rule- making or a notice
22 of inquiry to address the issues of customer protection provisions and operations
23 of IOSPs and other OSPs providing service to inmate facilities.

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III. THE USE OF PRE-PAID DEBIT ACCOUNTS IN INSTITUTIONS

Q. MS. BERNAL HAS RECOMMEND THE USE OF PRE-PAID ACCOUNTS FOR INMATES OF INSTITUTIONS.³ PLEASE ADDRESS THE PROS AND CONS OF INMATE PRE-PAID ACCOUNTS.

A. While pre-paid accounts can result in reduced rates to inmates and recipients of inmate calls, there are a number of issues that must be addressed prior to introducing pre-paid accounts into correctional facilities. Although not specifically mentioned by Ms. Bernal, pre-paid debit cards are the most common and generally available types of pre-paid account. However, in a correctional facility, the use of pre-paid debit cards presents a host of security and administrative issues. Depending upon the inmate call control platform used, pre-paid debit cards can enable inmates to access an 800 number platform, providing the inmate with dial tone. At this point that the call control platform loses its ability to control and manage inmate calls from within the facility. An Inmate, using a pre-paid debit card to access an 800 number platform, can potentially place calls to victims, judges, and witnesses with the facility having no ability to control such calls. The plastic material used in producing pre-paid debit cards can potentially be made into a weapon. Pre-paid debit cards, having a direct monetary value, can be bartered, introducing a disruptive and potentially dangerous element into the institution, as debit cards can be extorted from inmates through the use of

³ Bernal direct, pages 36-37.

5
1 force, stolen, or simply lost. Pre-paid cards require the management of the facility
2 to establish policies and procedures for the distribution, control, maintenance, and
3 accounting of pre-paid debit cards, requiring additional staff and associated
4 expense.

5
6 **Q. WITHIN THE CONCEPT OF "PREPAID DEBIT ACCOUNTS", IS**
7 **THERE AN ALTERNATIVE TO PRE-PAID DEBIT CARDS?**

8 **A.** Yes. As an alternative to pre-paid debit cards, a true debit platform, used in
9 conjunction with a collect call option, can provide a secure call control platform
10 and a call choice to inmates. A true debit process is set up and administered by
11 the institution or a contracted provider. An individual account is established for
12 each inmate. Friends and family of the inmate then deposit funds into the
13 account. When an inmate places a call, the account is debited. At the discretion
14 of the institution, security can be maintained by blocking access to certain
15 numbers and limiting inmate calls to a pre-approved list of telephone numbers.

16
17 **Q. YOU'VE SUMMARIZED THE "PROS" OF A TRUE DEBIT PROCESS.**
18 **ARE THERE ANY 'CONS'?**

19 **A.** Yes. While it does offer a workable alternative to pre-paid debit cards and allows
20 for reduced call rates, true debit also shares the administrative burdens commonly
21 associated with debit cards. Furthermore, true debit call control platforms are not
22 yet widely available from system vendors, and the cost of the available systems
23 can be prohibitively high.

1
2 Generally, the introduction of inmate pre-paid accounts into correctional facilities
3 requires a secure call control platform, and most importantly, the support of the
4 institutions' management who will likely bare the brunt of the additional
5 administrative expense associated with inmate prepaid accounts. Staff has
6 recommended the use of pre-paid accounts to "give inmates and any person who
7 pays for inmate telephone services the ability to plan and budget the amount they
8 pay for these services."⁴ The use of pre-paid accounts can certainly make calling
9 more convenient for inmates and family and friends of inmates. However,
10 mandating the use of pre-paid accounts will likely require IOSPs to make
11 additional investments in call control systems and burden institutions with
12 additional administrative expense, possibly resulting in higher rates.

13
14 **Q. MS. BERNAL HAS RECOMMENDED THAT THE COMMISSION**
15 **INITIATE A RULEMAKING OR NOTICE OF INQUIRY TO ADDRESS**
16 **THE ISSUES OF CUSTOMER PROTECTION PROVISIONS AND**
17 **OPERATIONS OF IOSPs AND OTHER OSPs PROVIDING SERVICE TO**
18 **INSTITUTIONS.⁵ PLEASE COMMENT ON THIS RECOMMENDATION.**

19 **A.** Qwest agrees that it is appropriate to investigate the business practices of IOSPs,
20 as with any service provider, when just cause has been established or when there
21 are questions regarding such business practices. It is not necessary for the
22 Commission to initiate a rule-making procedure to commence such an

⁴ Bernal direct, page 37.

⁵ Bernal direct, page 41.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO THE RATES AND CHARGES OF)
INSTITUTIONAL OPERATOR SERVICE)
PROVIDERS)

UTILITY CASE NO. 3317

AFFIDAVIT OF MICHAEL R. HORCASITAS

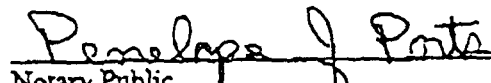
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Michael R. Horcasitas, being first duly sworn, depose and state that I am the individual whose prepared Qwest Corporation Rebuttal Testimony accompanies this Affidavit, and that said Rebuttal Testimony is true and correct to the best of my knowledge and belief, and, further, that these statements are true and accurate answers to the questions contained therein, and that I adopt those as my sworn testimony in this proceeding.

Date: August 31, 2001


Michael R. Horcasitas

SUBSCRIBED AND SWORN TO before me this 31st day of August, 2001.


Notary Public

My Commission Expires: 1-23-2003
(SEAL)

